Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

19 CFR Part 10

(T.D. 92–83)

GENERALIZED SYSTEM OF PREFERENCES
DIRECT IMPORTATION REQUIREMENT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule an interim amendment to the Customs Regulations which expanded the definition of "imported directly" under the Generalized System of Preferences (GSP) in order to allow goods produced in a member of a GSP-designated association of countries to be shipped through, and subjected to limited operations in, another member of the same association whose designation as a member of that association for GSP purposes was terminated by the President.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Craig Walker, Office of Regulations and Rulings, (202–566–2938).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On January 17, 1992, Customs published in the Federal Register as T.D. 92–6, 57 FR 2016, an interim rule amending the Customs Regulations implementing the Generalized System of Preferences (GSP), Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461–2465). The GSP provides for duty-free treatment on articles which (1) are designated by the President as eligible articles for GSP purposes, (2) are the growth, product, or manufacture of a country designated by the President as a beneficiary developing country (BDC) for GSP purposes, (3) have at least 35 percent of their appraised value attributable to the cost or value of materials produced in the BDC and/or the direct costs of processing

operations performed in the BDC, and (4) are imported directly from the BDC into the Customs territory of the United States. The Customs Regulations implementing the GSP are contained in §§ 10.171–10.178 (19 CFR 10.171–10.178).

The interim amendment contained in T.D. 92–6 involved an expansion of the definition of "imported directly" set forth in § 10.175 of those implementing regulations. Specifically, T.D. 92–6 added a new paragraph (e) to incorporate within the concept of "imported directly" a transaction involving goods produced in a member of a GSP-designated association of countries which are shipped through, and only subjected to limited processing operations or non-retail export sale in, another member of the same association whose designation as a member of that association for GSP purposes was terminated by the President. New paragraph (e) also (1) provides that in such a case a new GSP Certificate of Origin Form A must be prepared and signed declaring what, if any, operations were performed on the goods in the former BDC and (2) lists Brunei Darussalam and Singapore as former BDCs for purposes of the paragraph.

The interim regulatory amendment described above went into effect on the date of publication, and the notice prescribed a public comment period which closed on March 17, 1992. No comments were received during the public comment period. Accordingly, Customs believes that the interim regulatory amendment should be adopted as a final rule without change.

Executive Order 12291

This document does not meet the criteria for a ""major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspections, Imports.

AMENDMENT TO THE REGULATIONS

Accordingly, under the authority of 19 U.S.C. 66 and 1624, the interim rule amending 19 CFR Part 10 which was published at 57 FR 2016 on January 17, 1992, is adopted as a final rule without change.

CAROL HALLETT,
Commissioner of Customs.

Approved: August 31, 1992.
PETER K. NUNEZ,
Assistant Secretary of the Treasury.

[Published in the Federal Register, September 3, 1992 (57 FR 40314)]

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19 CFR Parts 141, 171, and 172

(T.D. 92–84)

PENALTIES AND CLAIMS FOR LIQUIDATED DAMAGES; PETITIONS FOR RELIEF

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by extending the amount of time allowable for the filing of a petition for relief in penalty or liquidated damages cases from 30 to 60 days. It amends the regulations to require that petitions be filed in duplicate rather than triplicate. It also amends the Regulations to provide that the amount of any claim for liquidated damages assessed for failure to redeliver merchandise into Customs custody shall be an amount equal to the value of the merchandise not redelivered rather than that amount plus any estimated duties due thereon.

EFFECTIVE DATE: September 4, 1992.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings, (202) 566–8317.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Petitioning Periods for Penalties:

The provisions of section 618 of the Tariff Act of 1930, as amended, (19 U.S.C. 1618), allow any person who has incurred a penalty for viola-

tion of the Customs or navigation laws to petition for mitigation of such penalty. The same statute also authorizes the Secretary of the Treasury or the Commissioner of Customs to mitigate those penalties "upon such terms and conditions as he deems reasonable and just * * *". The provisions of § 171.12(b) of the Customs Regulations (19 CFR 171.12(b)) require the filing of any petition for relief from any fine, penalty or forfeiture within 30 days after the date of mailing of the notice of the fine, penalty or forfeiture incurred.

Experience has shown that in fine and penalty cases, the 30-day petitioning period is too short. In most penalty situations, the charged party requires time to research its records in order to respond to the penalty notice in a coherent manner. Additionally, mailing and routing time reduce the time available to respond. As a result, many parties seek extensions of the 30-day period. Customs resources must be dedicated to responding to extension requests. Accordingly, in order to ease the burden to the public, this document amends the provisions of § 171.12(b) of the Regulations to extend the petitioning period in these cases from 30 to 60 days from the date of mailing of the notice.

It should be noted that this amendment does not affect the 30-day petitioning period for claimants to property which has been seized subject to forfeiture. Nor does this amendment affect the 30-day period in which a supplemental petition for relief can be filed. In order to limit the possibility of denial of due process rights of claimants to seized property subject to forfeiture and to minimize costs of storage and seizure to Customs, the 30-day petitioning period for claimants to such property will remain in force. In the supplemental petition situation, most issues are raised and discussed at the initial petition stage. Accordingly, research that a party needs to accomplish in order to respond to a penalty or liquidated damages notice is generally complete and extra time need not be afforded at that stage in the process.

Under the current provisions of § 171.15 of the Regulations (19 CFR 171.15), the district director has the authority to extend the petitioning period from 30 to 60 days when cases involve complex legal or factual problems. In light of the expansion of the penalty petitioning period from 30 to 60 days, this document also amends § 171.15 to empower the district director to extend the petitioning period in complex penalty cases from 60 to 90 days. Inasmuch as the petitioning period in seizure cases remains at 30 days, the regulation is amended in a manner to continue to permit extension of the 30-day period to 60 days in appropriate seizure cases and in the filing of supplemental petitions in any case.

The current regulations (19 CFR 171.12(c)) also provide that petitions be filed in triplicate. Customs does not need three copies of the petition for orderly processing of cases. Accordingly, in order to lighten the paperwork burden on petitioning parties, this document amends the regulations to provide that petitions are to be filed in duplicate rather than triplicate.

Petitioning Periods for Claims for Liquidated Damages:

As provided by section 623(a) of the Tariff Act of 1930, as amended, (19 U.S.C. 1623(a)), the Secretary of the Treasury may by regulation or specific instruction require such bonds or other security as he may deem necessary to protect the revenue or assure compliance with any provision of law which he or the Customs Service is authorized to enforce. Pursuant to the provisions of § 623(c) of the Tariff Act of 1930, (19 U.S.C. 1623(c)), the Secretary of the Treasury may authorize the cancellation of any charge made against such bond, in the event of a breach of any condition of the bond, upon payment of such lesser amount or upon such other terms and conditions as he may deem sufficient. When a bond principal or surety incurs liquidated damages liability for violation of the terms of a Customs bond, those charged parties are afforded petitioning rights as provided in Part 172 of the Customs Regulations (19 CFR Part 172). Specifically, § 172.12(b) permits the filing of a petition for relief within 30 days of the date of mailing of any notice of claim for liquidated damages.

As with the petitioning period for penalties, Customs is of the view that this 30-day petitioning period for liquidated damages is too short. The time necessary for a bond principal or surety to accomplish the research to respond to the claim, in addition to time lost for mailing and routing of documents, makes compliance with the 30-day period difficult. Further, as with penalty cases, Customs is required to process numerous requests for extension of the petitioning period. This results in inefficient use of resources. Accordingly, in order to ease the burden to the public, this document amends the provisions of § 172.12(b) of the Regulations to extend the petitioning period in liquidated damages cases from 30 to 60 days from the date of mailing of the notice. This amendment does not affect the 30-day filing period for supplemental petitions for relief.

The current regulations (19 CFR 172.12(c)) also provide that petitions be filed in triplicate. Customs does not need three copies of the petition. Accordingly, in order to lighten the paperwork burden on the petitioning parties, this document amends the regulations to provide that petitions are to be filed in duplicate rather than triplicate.

Failure to Redeliver; Assessment Amounts:

The provisions of § 141.113(g) of the Customs Regulations (19 CFR 141.113(g)) authorize Customs to assess liquidated damages against a bond principal who fails to comply with any request for redelivery or marking of merchandise. The claim is assessed in an amount equal to the value of the merchandise not redelivered or marked, plus estimated duties due thereon. Pursuant to 113.62(k) of the Customs Regulations (19 CFR 113.62(k)), claims are assessed in an amount equal to three times the value of the merchandise if the merchandise is restricted or is alcoholic beverages.

Through this document, Customs is amending the provisions of § 141.113(g) to provide for liquidated damages in an amount equal to the

value of the merchandise which is the subject of the breach (or three times the value in the case of restricted merchandise or alcoholic beverages) without reference to estimated duties and taxes, inasmuch as there is no reason to measure the liquidated damages assessed based on duties and taxes. These amounts will have been collected on entry/entry summary. Also, the amendment will specify that assessment of liquidated damages for failure to redeliver restricted merchandise or alcoholic beverages will be three times the value of such merchandise as currently provided by regulation.

In addition, the second sentence of § 141.113(a) is being amended to change a reference to the Tariff Schedules of the United States to the appropriate reference in the Harmonized Tariff Schedule of the United States. Although this change was incorporated in T.D. 89–1, 53 FR 51262, it was never included in the Code of Federal Regulations.

Inapplicability of Notice and Delayed Effective Date Requirements

Insofar as the number of copies of petitions to be filed is a matter of agency management, the notice and public procedure requirements of 5 U.S.C. 553 are inapplicable to this document pursuant to 5 U.S.C. 553(a)(2). Further, inasmuch as the extension of the time for filing certain petitions for relief, and reduction of the amount of the claim for liquidated damages to be assessed for failure to redeliver merchandise into Customs custody reduce burdens and confer a benefit on the public, notice and public procedure thereon are unnecessary and contrary to the public interest, pursuant to the provisions of 5 U.S.C. 553(b)(B). For the same reasons, a delayed effective date is not required pursuant to 5 U.S.C. 553(d).

Executive Order 12291 and Regulatory Flexibility Act

Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This document does not meet the criteria for a "major rule as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Jeremy Baskin, Penalties Branch U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR

Part 141
Customs duties and inspection, Imports.

Part 171
Administrative practice and procedure, Penalties.

Part 172
Administrative practice and procedure, Penalties.

AMENDMENT TO THE REGULATIONS

Accordingly, Chapter I of title 19, Code of Federal Regulations, is amended as set forth below:

PART 141 – ENTRY OF MERCHANDISE

1. The general authority citation for Part 141 and specific authority for § 141.113 continue to read as follows:

* * * * * * *

§ 141.113 also issued under 19 U.S.C. 1499, 1623.

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. In § 141.113, paragraph (g) is amended to read as follows:

* * * * * * *

§ 141.113 Recall of merchandise released from Customs custody.

* * * * * * *

(g) *Demand not complied with.* When the demand of the district director for return of merchandise to Customs custody is not complied with, liquidated damages shall be assessed, except in the case of merchandise entered under Chapter 98, Subchapter XII, HTSUS (19 U.S.C. 1202), in an amount equal to the value of the merchandise not returned or three times the value of the merchandise not returned if the merchandise is restricted merchandise or alcoholic beverages, as determined at the time of entry. The amount of liquidated damages to be assessed on merchandise entered under Chapter 98, subchapter XII, HTSUS, is set forth in § 10.39(d)(3) of this chapter.

PART 171 – FINES, PENALTIES AND FORFEITURES

1. The authority citation for Part 171 continues to read as follows:

Authority: 19 U.S.C. 66, 1592, 1618, 1624. The provisions of subpart C also issued under 22 U.S.C. 401; 46 U.S.C. App. 320 unless otherwise noted.

Subpart F also issued under 19 U.S.C. 1595a, 1605, 1614; 21 U.S.C. 881 note.

2. Section 171.12 is amended by revising paragraphs (b) and (c) to read as follows:

§ 171.12 Filing of petition.

* * * * * * *

(b) *When filed.* If a petitioner seeks expedited relief under subpart F of this part, a petition must be filed within the time frame stated in § 171.52(d). Otherwise, unless additional time has been authorized as provided in § 171.15, petitions for relief shall be filed within 30 days from the date of the mailing of the notice of seizure of property subject to

forfeiture incurred or within 60 days of the mailing of notice of a fine or penalty incurred.

(c) *Number of copies.* The petition shall be filed in duplicate.

* * * * * * *

3. Section 171.15 is amended by revising paragraph (a) to read as follows:

§ 171.15 Extensions of time for filing petitions.

(a) *Extension of time for filing petition or supplemental petition for relief.* If there is at least 1 year before the statute of limitations may be asserted as a defense, a district director may extend the time for filing a petition (or establish a 60-day or 90-day response period pursuant to paragraph (a)(4) of this section) or supplemental petition, upon the request of a person who is or may be liable for a fine or penalty, or who has an interest in property subject to forfeiture, in the following situations:

* * * * * * *

(4) The case involves a complex legal or factual problem. Examples of the type of problem are the need to examine voluminous records (e.g., Customs entries, purchase orders, invoices and the like) to learn the facts on which to base a petition, or the need to determine legal responsibilities in a case involving numerous parties or numerous violations. In such cases, the district director, on his own initiative, may specify in any seizure notice that a 60-day response period from the date of mailing of the notice is warranted, or may specify in any fine or penalty notice that a 90-day response period from the date of mailing of the notice is warranted. If, in such cases, the district director concludes that only a 30 or 60 day response period is warranted and so indicates in the seizure or penalty notice, the person charged with responding shall have 7 days from the date of the mailing of the notice to appeal the decision of the district director to the Director, International Trade Compliance Division, Customs Headquarters. If an appeal is taken, a copy of the appeal must be furnished to the district director who issued the notice, and the original forwarded to the Director, International Trade Compliance Division, U.S. Customs Service, 1301 Constitution Ave., NW., Washington, D.C. 20229. Such appeals should clearly set forth why the particular case warrants an extension beyond the 30 or 60-day period. If the appeal is granted, the Director, International Trade Compliance Division, will notify both the district director and the person charged with responding of the time period allotted for response. In no case will the filing of an appeal under this paragraph toll the 30 or 60-day period of time specified by the district director in the seizure or penalty notice.

* * * * * * *

PART 172 – LIQUIDATED DAMAGES

1. The authority citation for Part 172 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

2. Section 172.12 is amended by removing the number "30" and adding, in its place, the number "60" wherever it appears, and paragraph (c) is revised to read as follows:

(c) *Number of copies.* The petition shall be filed in duplicate.

MICHAEL H. LANE,
Acting Commissioner of Customs.

Approved: August 26, 1992.
PETER K. NUNEZ,
Assistant Secretary of the Treasury,

[Published in the Federal Register, September 4, 1992 (57 FR 40605)]

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19 CFR Part 10

(T.D. 92–85)

THEATRICAL EFFECTS, WORKS OF ART AND OTHER ARTICLES FOR TEMPORARY OR PERMANENT EXHIBITION

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations regarding duty-free importations under bond to no longer require submission of Customs Form 3325 either in connection with the entry of theatrical effects, works of art, engravings, photographic pictures, and philosophical and scientific apparatus admitted for temporary exhibition or in connection with the entry of articles imported for permanent exhibition by an institution established for the encouragement of agriculture, arts, education or science. The amendments will eliminate unnecessary paperwork and thus streamline the entry process for Customs and the importing public.

EFFECTIVE DATE: September 4, 1992.

FOR FURTHER INFORMATION CONTACT: Angela Downey, Entry Operations Branch, (202–927–1082).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Subchapter XIII of Chapter 98, Harmonized Tariff Schedule of the United States (HTSUS), covers various articles which, when not im-

ported for sale or for sale on approval, may be admitted into the United States without the payment of duty and under bond for their exportation within a specified period of time from the date of importation. Subheading 9813.00.65, HTSUS, covers "[t]heatrical scenery, properties and apparel brought into the United States by proprietors or managers of theatrical exhibitions arriving from abroad for temporary use by them in such exhibitions". Subheading 9813.00.70 refers to "[w]orks of the free fine arts, engravings, photographic pictures and philosophical and scientific apparatus brought into the United States by professional artists, lecturers or scientists arriving from abroad for use by them for exhibition and in illustration, promotion and encouragement of art, science or industry in the United States".

Section 10.31, Customs Regulations (19 CFR 10.31), sets forth the basic entry requirements and procedures applicable to articles which are claimed to be exempt from duty under Subchapter XIII of Chapter 98, HTSUS. Paragraph (a)(3) of section 10.31 provides that, in addition to the data usually shown on a regular consumption entry summary, each temporary importation bond entry summary shall include (1) the HTSUS subheading number under which entry is claimed, (2) a statement of the use to be made of the articles in sufficient detail to enable the district director to determine whether they are entitled to entry as claimed, and (3) a declaration that the articles are not to be put to any other use and that they are not imported for sale or sale on approval.

Section 10.33, Customs Regulations (19 CFR 10.33), specifically concerns the theatrical effects of HTSUS subheading 9813.00.65 and provides in paragraph (a) that, in addition to the requirements of section 10.31, a declaration of the manager or proprietor shall be required on Customs Form 3325 in connection with the entry of such theatrical effects. Section 10.34, Customs Regulations (19 CFR 10.34) specifically refers to the works of art and other articles of HTSUS subheading 9813.00.70 and similarly requires, as an addition to the entry requirements of section 10.31, a declaration on Customs Form 3325 by the professional artist, lecturer or scientist. Customs Form 3325 is entitled "Declaration on Entry of Theatrical Effects for Temporary Use or of Works of Art, Etc., For Temporary or Permanent Exhibition" and incorporates the following separate declarations: (1) a declaration by the manager or proprietor which essentially mirrors the legal requirements for entry under HTSUS subheading 9813.00.65, (2) a declaration by the professional artist, lecturer or scientist which essentially mirrors the legal requirements for entry under HTSUS subheading 9813.00.70, and (3) for purposes duty-free entry of articles under bond for permanent exhibition by an institution established for the encouragement of agriculture, arts, education or science, as provided in subheading 9812.00.20 within Subchapter XII of Chapter 98, HTSUS, and as required under section 10.49, Customs Regulations (19 CFR 10.49), a declaration by an officer of the institution reflecting the basic legal requirements for entry under that HTSUS subheading.

In view of the fact that section 10.31(a)(3) as described above already requires that the entry summary include statements and other information sufficient for the district director to determine whether imported articles are entitled to entry under a subheading within Subchapter XIII of Chapter 98, HTSUS, Customs believes that the two declarations on Customs Form 3325 required by sections 10.33 and 10.34 are redundant and thus unnecessary. Accordingly, in order to reduce unnecessary paperwork and thus streamline the entry process, this document (1) revises the title and text of section 10.33 to remove paragraph (a) concerning the relevant declaration on Customs Form 3325, and also to make some editorial improvements including incorporation of footnote 36 within the text and clarification of the legal context of the section, and (2) removes section 10.34 which only concerns the relevant declaration on Customs Form 3325.

It is also noted that if only the above-described regulatory changes are made, Customs Form 3325 would still have to be submitted in connection with the entry of articles for permanent exhibition under subheading 9812.00.20 as mentioned above. Customs does not believe that it would be appropriate to continue to require submission of Customs Form 3325 for only this one purpose, which would also necessitate revising the form to omit the other two declarations. Accordingly, in order that use of Customs Form 3325 may be eliminated entirely, this document also amends the first sentence of section 10.49(a) by removing the reference to Customs Form 3325 and inserting in its place a general reference to entitlement to entry as claimed, similar to the approach taken in section 10.31(a)(3) as discussed above.

Inapplicability of Notice and Delayed Effective Date Requirements

Inasmuch as these amendments reduce a regulatory burden and thus confer a benefit on the general public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedures are unnecessary and contrary to the public interest and, for the same reason pursuant to 5 U.S.C. 553(d)(1), a delayed effective date is not required.

Executive Order 12291

These amendments do not meet the criteria for a "major rule" as defined in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Drafting Information

The principal author of this document was Francis W. Foote, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 10

Customs duties and inspection, Imports.

AMENDMENTS TO THE REGULATIONS

Based on the above, Part 10, Customs Regulations (19 CFR Part 10), is amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for Part 10 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * * * *

2. Section 10.33 is amended by revising the section heading and the section text to read as follows:

§ 10.33 Theatrical effects.

For purposes of the entry of theatrical scenery, properties and apparel under subheading 9813.00.65, Harmonized Tariff Schedule of the United States:

(a) Animals imported for use or exhibition in theaters or menageries may be classified as theatrical properties; and

(b) The term "theatrical scenery, properties and apparel" shall not be construed to include motion-picture films. For provisions relating to the return without formal entry of theatrical effects taken from the United States, see § 10.68 of this part.

3. Footnote 36 to section 10.33 is removed.

4. Section 10.34 is removed.

5. Section 10.49(a), first sentence, is amended by removing the words "on Customs Form 3325" and adding, in their place, the words "in sufficient detail to demonstrate entitlement to entry as claimed".

CAROL HALLETT,
Commissioner of Customs.

Approved: August 31, 1992.

PETER K. NUNEZ,
Assistant Secretary of the Treasury.

[Published in the Federal Register, September 4, 1992 (57 FR 40604)]

(T.D. 92–86)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR AUGUST 1992

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday: None.

Greece drachma:

August 3, 1992	$0.005499
August 4, 1992	.005511
August 5, 1992	.005504
August 6, 1992	.005488
August 7, 1992	.005549
August 10, 1992	.005525
August 11, 1992	.005507
August 12, 1992	.005525
August 13, 1992	.005540
August 14, 1992	.005507
August 17, 1992	.005525
August 18, 1992	.005546
August 19, 1992	.005565
August 20, 1992	.005576
August 21, 1992	.005601
August 24, 1992	.005741
August 25, 1992	.005724
August 26, 1992	.005705
August 27, 1992	.005696
August 28, 1992	.005705
August 31, 1992	.005734

South Korea won:

August 3, 1992	$0.001265
August 4, 1992	.001263
August 5, 1992	.001262
August 6, 1992	.001262
August 7, 1992	.001262
August 10, 1992	.001263
August 11, 1992	.001260
August 12, 1992	.001261
August 13, 1992	.001262
August 14, 1992	.001261
August 17, 1992	.001260
August 18, 1992	.001258
August 19, 1992	.001258
August 20, 1992	.001260
August 21, 1992	.001260
August 24, 1992	.001260
August 25, 1992	.001261
August 26, 1992	.001263

FOREIGN CURRENCIES – Daily rates for countries not on quarterly list for August 1992 (continued):

South Korea won (continued):

August 27, 1992	$0.001266
August 28, 1992	.001266
August 31, 1992	.001265

Taiwan N.T. dollar:

August 3, 1992	$0.040064
August 4, 1992	.040048
August 5, 1992	.039968
August 6, 1992	.039880
August 7, 1992	.039811
August 10, 1992	.039809
August 11, 1992	.039825
August 12, 1992	.039774
August 13, 1992	.039761
August 14, 1992	.039794
August 17, 1992	.039793
August 18, 1992	.039690
August 19, 1992	.039675
August 20, 1992	.039706
August 21, 1992	.039726
August 24, 1992	.039785
August 25, 1992	.039748
August 26, 1992	.039746
August 27, 1992	.039755
August 28, 1992	.039785
August 31, 1992	.039841

(LIQ–03–01 S:NISD CIE)

Dated: September 1, 1992.

MICHAEL MITCHELL,
Chief,
Customs Information Exchange.

(T.D. 92–87)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR AUGUST 1992

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in Treasury Decision 92–63 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday: None.

FOREIGN CURRENCIES—Variances from quarterly rates for August 1992 (continued):

Austria schilling:

August 24, 1992	$0.101020
August 25, 1992	.101061
August 26, 1992	.101020
August 27, 1992	.100756
August 28, 1992	.100939
August 31, 1992	.101350

Belgium franc:

August 21, 1992	$0.033761
August 24, 1992	.034578
August 25, 1992	.034662
August 26, 1992	.034507
August 27, 1992	.034364
August 28, 1992	.034495
August 31, 1992	.034578

China, P.R. reminbi yuan:

August 7, 1992	N/A
August 10, 1992	N/A
August 17, 1992	N/A

Denmark krone:

August 24, 1992	$0.184128
August 25, 1992	.184315
August 26, 1992	.183621
August 27, 1992	.183402
August 28, 1992	.183570
August 31, 1992	.184400

Finland markka:

August 24, 1992	$0.258264
August 25, 1992	.258598
August 26, 1992	.257798
August 27, 1992	.257268
August 28, 1992	.257235

France franc:

August 24, 1992	$0.209052
August 25, 1992	.209074
August 26, 1992	.208485
August 27, 1992	.208138
August 28, 1992	.208485
August 31, 1992	.209249

Germany deutsche mark:

August 21, 1992	$0.695652
August 25, 1992	.714541
August 26, 1992	.710732
August 27, 1992	.708567
August 28, 1992	.710884
August 31, 1992	.713369

FOREIGN CURRENCIES—Variances from quarterly rates for August 1992 (continued):

Ireland pound:

August 25, 1992	$1.885000
August 26, 1992	1.874500
August 27, 1992	1.867500
August 28, 1992	1.874000
August 31, 1992	1.883500

Italy lira:

August 24, 1992	$0.000933
August 25, 1992	.000935
August 26, 1992	.000930
August 27, 1992	.000926
August 28, 1992	.000929
August 31, 1992	.000934

Netherlands guilder:

August 21, 1992	$0.617132
August 24, 1992	.631752
August 25, 1992	.633714
August 26, 1992	.630438
August 27, 1992	.628338
August 28, 1992	.630199
August 31, 1992	.632591

Norway krone:

August 24, 1992	$0.180002
August 25, 1992	.180083
August 26, 1992	.179565
August 27, 1992	.179179
August 28, 1992	.179244
August 31, 1992	.180148

Spain peseta:

August 24, 1992	$0.011019
August 25, 1992	.010989
August 31, 1992	.010989

Sri Lanka rupee:

August 3, 1992	N/A
August 4, 1992	N/A
August 5, 1992	N/A
August 6, 1992	N/A
August 7, 1992	N/A
August 10, 1992	N/A
August 12, 1992	N/A
August 13, 1992	N/A
August 17, 1992	N/A
August 18, 1992	N/A
August 27, 1992	N/A
August 28, 1992	N/A

FOREIGN CURRENCIES—Variances from quarterly rates for August 1992 (continued):

Sweden krona:

August 24, 1992	$0.194799
August 25, 1992	.194875
August 26, 1992	.194515
August 27, 1992	.194081
August 28, 1992	.194062
August 31, 1992	.195084

Switzerland franc:

August 20, 1992	$0.774293
August 21, 1992	.781861
August 24, 1992	.804829
August 25, 1992	.801282
August 26, 1992	.793651
August 27, 1992	.790514
August 28, 1992	.794281
August 31, 1992	.802246

(LIQ–03–01 S:NISD CIE)

Dated: September 1, 1992.

MICHAEL MITCHELL,
Chief,
Customs Information Exchange.

U.S. Customs Service

Proposed Rulemakings

19 CFR Parts 141, 142, 143, and 151

INVOICE REQUIREMENTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to set forth specific requirements for the description of certain types of merchandise on commercial invoices submitted to Customs in connection with the importation and entry of such merchandise in the United States. The proposed amendments are intended to ensure that Customs has sufficient information to determine the tariff classification and admissibility of the merchandise with reference to the numerical scheme and product descriptions contained in the Harmonized Tariff Schedule of the United States.

DATES: Comments must be received on or before November 2, 1992.

ADDRESS: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Elliott Feldman, Office of Trade Operations, (202–927–0236).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 21, 1988, Customs published T.D. 89–1 (53 FR 51244) setting forth interim amendments to the Customs Regulations (19 CFR chapter I) to reflect the structure, language, and numbering of the Harmonized Tariff Schedule of the United States (HTSUS). The interim amendments (which took effect on January 1, 1989, to coincide with the implementation of the HTSUS as a replacement for the Tariff Schedules of the United States (TSUS)) included the replacement of TSUS numerical and organizational references with the new corresponding HTSUS references as well as the amendment of regulatory wording to reflect HTSUS terminology which differed from that of the TSUS. In-

cluded in the regulatory amendments was a revision of section 141.89(a), Customs Regulations (19 CFR 141.89(a)), which sets forth specific descriptive information which must be supplied on commercial invoices for approximately 50 classes of imported merchandise. The notice invited the public to submit comments on the interim amendments and, after an extension of time published on March 7, 1989 (54 FR 9429), the public comment period closed on March 21, 1989.

After the interim regulations went into effect and following the close of the public comment period, guidelines were drafted by the National Import Specialist (NIS) Division of Customs to assist the import community and Customs field personnel in the uniform application of criteria for accurate and complete invoices for various specific HTSUS headings and subheadings. These draft guidelines were sent to approximately 10,500 major importers, trade associations, and Customs officers between June 30 and July 15, 1989. After reviewing the comments received in response to the interim regulations and the draft guidelines on invoice requirements, Customs determined that it would be beneficial to obtain further information from the importing community relating to the invoice requirements under interim section 141.89(a) and the draft guidelines. Accordingly, on November 14, 1989, Customs published a notice (54 FR 47348) which (1) announced a series of public meetings to be held in New York from November 27 to December 8, 1989, to discuss invoice requirements with the importing community and (2) reopened the comment period of the interim regulations solely regarding the invoice requirements, with comments to be submitted on or before February 7, 1990.

On October 2, 1990, Customs published T.D. 90–78 (55 FR 40162) which adopted as a final rule, with some changes, the interim regulatory amendments previously published in T.D. 89–1 as discussed above. That final rule document noted that a large number of complex issues were raised in the numerous comments on invoice requirements received in response to interim section 141.89(a), the draft NIS Division guidelines, and the November 14, 1989, notice which reopened the comment period for invoice requirement purposes. In view of this, and in consideration of the significant impact which invoice requirements have on the trade community, Customs stated in T.D. 90–78 that further study was necessary before those invoice issues could be properly resolved. Even though interim section 141.89(a) was adopted as a final regulation without change in T.D. 90–78, the notice stated that all issues regarding invoice requirements would be dealt with as appropriate in a separate document at a later date. Accordingly, this document sets forth new proposals for dealing with all aspects of invoice product description requirements based on further study of this matter within Customs after the publication of T.D. 90–78.

Discussion of Proposals

It is first necessary to point out that 19 U.S.C. 1481(a)(3) and sections 141.86(a)(3) and 142.6(a)(1), Customs Regulations (19 CFR

141.86(a)(3) and 142.6(a)(1)), contain the general requirement that each invoice of merchandise imported into the United States include a detailed or adequate description of the merchandise. Section 142.6(a) further states that the commercial invoice shall be furnished with the entry and before release of the merchandise is authorized. Thus, even though the Customs Regulations may prescribe specific invoice descriptive details for certain classes of merchandise (as is done, for example, in section 141.89(a)), all other merchandise nevertheless remains subject to the general statutory and regulatory requirement that the accompanying invoice contain a detailed or adequate description of the merchandise. Moreover, since the invoice descriptions are principally used by Customs officers to assist them in determining the tariff classification of the merchandise for admissibility, duty, and statistical reporting purposes, the absence of a sufficient invoice description will often result in a delay in the entry, release, and liquidation process.

Based on the comments submitted by the public and as a result of Customs internal review of this matter, Customs has determined that it would be preferable to reduce the regulatory burden on the public by limiting the specific, detailed, invoice description requirements in section 141.89(a) to the following three merchandise groups: (1) textile and apparel products which are subject to quotas and visa requirements under the U.S. textile import program; (2) steel and steel products which until March 31, 1992, were subject to voluntary restraint arrangements; and (3) machine tools which until December 31, 1991, were subject to voluntary restraint arrangements. The need to have specific, detailed, mandatory invoice descriptions for those groups of products is derived from the fact that such information is necessary not only to ensure proper tariff classification but also (1) in the case of textile and apparel products, to ensure compliance with the special requirements and objectives of the textile import program and (2) in the case of steel products and machine tools, to facilitate the monitoring of imports of these trade-sensitive products which may be the subject of future bilateral or multilateral trade agreements.

In connection with the proposed revision of section 141.89(a) as discussed below, Customs also proposes to amend the title of section 141.89 in order to reflect that the required information specified in the section is an elaboration of, rather than in addition to, the basic "detailed description" requirement in section 141.86(a)(3). Furthermore, in order to clarify the relationship between section 142.6(a)(1) and the product description requirements contained in Part 141, Customs proposes to amend section 142.6(a)(1) by adding at the end "as provided for in Part 141 of this chapter". In addition, to avoid overlap and to facilitate application of specific product description requirements within the regulations, Customs proposes to remove present sections 151.62 (pertaining to wool and animal hair) and 151.82 (pertaining to cotton), which are both titled "Information on invoices", and to transfer their contents, with some changes, to revised section 141.89(a) as descriptive require-

ments applicable to merchandise classified under HTSUS headings 5101–5105 and 5201, respectively.

With regard to the proposed revision of section 141.89(a) set forth in this document, the first sentence in the introductory paragraph replaces the introductory sentence in present section 141.89(a) and, in keeping with the proposed revision of the title of section 141.89 mentioned above, clarifies that the required information set forth therein is in addition to the "descriptive information specified" in section 141.86(a)(3) (for example, the name by which each item is known and the grade or quality, which must be provided under authority of section 141.86(a)(3) and thus do not require specification in revised section 141.89(a)). The second sentence in the introductory paragraph is intended to ensure that the required information will be submitted with reference to each specified HTSUS Chapter, heading and/or subheading number which applies to the imported merchandise (and not with regard to the product descriptors that accompany those numbers, which are provided for ease of reference only and thus are not intended to have legal effect). Thus, for example, if both general Chapter or heading and specific subheading descriptive requirements are set forth and the imported merchandise falls under that Chapter or heading and subheading, the invoice must set forth all applicable information reflecting both the general descriptive requirements and the specific information required for that subheading, even if the merchandise under consideration is not specifically mentioned in the product descriptors appearing opposite those HTSUS numbers. The specific product description requirements in revised section 141.89(a) as set forth in this document have been derived from the relevant portions of present section 141.89(a), from the draft NIS Division guidelines, from the comments and suggestions received during the public comment periods discussed above, and from Customs further internal review of the product descriptions contained in the HTSUS. These product description requirements represent what Customs believes is the minimum information that normally must be present in order for Customs to carry out its statutory functions. It must be recognized that there may continue to be instances in which Customs determines that still further descriptive information must be requested from the importer or broker due to the circumstances of a particular importation. Customs believes it is in the interest of all parties to treat those instances on a case-by-case nonregulatory basis rather than to increase the overall regulatory burden by expanding the regulatory particulars to cover them.

With regard to those commodities not covered by the proposed revision of section 141.89(a), including certain products that are currently mentioned in section 141.89(a), Customs proposes to have no specific regulatory invoice description requirements other than those in present section 141.86. Thus, while Customs will continue to require that invoices contain a sufficiently detailed description of the imported merchandise (except where the information is available from alternate

sources as discussed further below), in the case of merchandise not specifically covered by regulatory provisions, the authority for requiring such information will remain the general statutory and regulatory provisions cited above.

The approach described above does not represent a fundamental change in the legal position of Customs regarding the need for invoice descriptions sufficiently detailed so that Customs may carry out its statutory duty to classify imported merchandise. The limitation of specific regulatory (and thus mandatory) requirements to only three categories of goods will provide the importing public and Customs officers with more flexibility in determining what information should be provided to Customs with regard to the far larger number of products not specified in regulatory texts. In this regard Customs recognizes that while a detailed invoice description may always be necessary for some types of products, in other cases the very name or nature of the imported product may speak for itself so as to obviate the need for a detailed invoice description. In such latter cases the imposition of specific, detailed, regulatory standards would represent an unnecessary burden on importers, would provide no particular benefit to Customs, and thus should be avoided whenever possible. Customs believes that the proposed revision of section 141.89(a) to cover only the three groups of products described above will assist in reaching this goal.

Customs should also point out that there are several alternative procedures which the trade community may use in order to reduce the need for complete, detailed product descriptions appearing directly on invoices. The preferred and most effective alternate methods are through a pre-entry classification decision or by means of a written, binding tariff classification ruling issued under Part 177, Customs Regulations (19 CFR Part 177). The principal benefit derived from the pre-entry classification or Part 177 ruling procedure is that the invoice description of the merchandise can be reduced to a minimum because detailed information was previously provided by the importer when the pre-entry review was conducted or when the Part 177 ruling was requested. Another alternate method is to provide the information in advance to the responsible National Import Specialist for retention in his/her file, with copies to the field import specialists at those locations where the merchandise will be imported. In addition, where the invoice does not provide a sufficient description of the merchandise, Customs will allow the importer to provide the needed information on a separate sheet attached to the invoice (see present section 141.86(i)). It is important to remember, however, that these alternate procedures cannot be used in place of the specific invoice requirements set forth in section 141.89. Customs also proposes in this document (1) to amend section 141.86(a)(3) to clarify the availability of the preclassification/binding ruling and pre-approval procedures as alternatives to providing detailed product descriptions on invoices and (2) to amend section 143.36(c)(3) concerning electronic

transmission of invoice data to clarify that the specific requirements set forth in section 141.89 are also mandatory in that context.

Where parties previously submitted relevant comments to Customs regarding merchandise covered by this proposed revision of section 141.89(a), those parties are hereby advised that they should resubmit those comments if they wish them to be considered in connection with this matter. In addition to the procedures discussed above, Customs will also consider any suggestions regarding other possible alternatives to providing Customs with detailed invoice descriptions in cases involving merchandise not covered by specific regulatory requirements.

COMMENTS

Before adopting the proposed amendments, consideration will be given to any written comments (preferably in triplicate) timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), section 1.4, Treasury Department Regulations (31 CFR 1.4), and section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2119, Customs Service Headquarters, 1301 Constitution Avenue, N.W., Washington, D.C.

REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed regulations amendments will not have a significant economic impact on a substantial number of small entities. The proposed amendments merely restate existing statutory and regulatory requirements and thus would not result in any increased economic impact. Accordingly, these proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

EXECUTIVE ORDER 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

PAPERWORK REDUCTION ACT

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to Customs at the address set forth previously.

The collection of information in these proposed regulations is in section 141.89(a). This information is required by Customs under 19 U.S.C.

1481(a)(3) and is used to determine the admissibility and tariff status of imported merchandise. The likely respondents are business organizations including importers, exporters, and manufacturers.

Estimated total annual reporting and/or recordkeeping burden: _____ hours.

The estimated annual burden per respondent/recordkeeper varies from _____ minutes to _____ hours, depending on individual circumstances, with an estimated average of _____ hours.

Estimated number of respondents and/or recordkeepers: _____.

Estimated annual frequency of responses: _____.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Parts 141, 142, and 143

Customs duties and inspections, Imports, Invoice requirements.

19 CFR Part 151

Customs duties and inspections, Imports.

Proposed Amendments to the Regulations

Accordingly, it is proposed to amend Parts 141, 142, 143 and 151, Customs Regulations (19 CFR Parts 141, 142, 143 and 151), as set forth below:

PART 141 – ENTRY OF MERCHANDISE

1. The authority citation for Part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * * * *

Subpart F also issued under 19 U.S.C. 1481;

* * * * * * *

2. Section 141.86(a)(3) is amended by replacing the semicolon at the end with a period and by adding thereafter the following: "Except in the case of merchandise covered by § 141.89 of this part, where a party either has obtained a preclassification/binding ruling number covering the merchandise being entered or is a participant in a pre-approval program, the preclassification/binding ruling number or appropriate pre-approval identifier may be used in place of a detailed description of the merchandise;".

3. The title to section 141.89 is revised to read as follows:

§ 141.89 Specific descriptive information for certain classes of merchandise.

4. Section 141.89(a) is revised to read as follows:

(a) In addition to the descriptive information specified in § 141.86(a)(3) of this part, invoices covering imported merchandise classifiable under the following Chapters, headings, and subheadings of the Harmonized Tariff Schedule of the United States (HTSUS) shall set forth at a minimum the descriptive information specified below. For purposes of this paragraph, the specified information shall be submitted according to each applicable HTSUS Chapter, heading and subheading numerical reference set forth below and without regard to the product descriptors set out with those numerical references which are provided for ease of reference only.

CHAPTER 39

PLASTICS AND ARTICLES THEREOF

Heading/ Subheading	
3921.12.11 3921.12.15 3921.12.19 3921.13.11 3921.13.15 3921.13.19 and 3921.90.11 through 3921.90.29:	PLATES, SHEETS, FILM, FOIL AND STRIP, OF PLASTICS AND COMBINED WITH TEXTILE MATERIAL: 1. Identify the type of plastic used in the product. 2. States whether the plastic is cellular or compact or both. 3. Describe the construction of the product. 4. Specify the fiber content of the textile material by weight. 5. Provide the weights of the plastics and the textile materials as percentages of the total product weight. 6. Provide the total weight of the product in kilograms per square meter. 7. If the textile material is coated or laminated with plastics on one or both sides, so state. 8. If the product is made of woven polyethylene strips, indicate the color or tint of the strips and also the color of the plastic coating or laminating film. 9. Indicate how the product is shipped (for example, in rolls, bolts) and provide the overall dimensions of the material.

CHAPTER 42

ARTICLES OF LEATHER; SADDLERY AND HARNESS; TRAVEL GOODS, HANDBAGS AND SIMILAR CONTAINERS; ARTICLES OF ANIMAL GUT (OTHER THAN SILKWORM GUT)

Heading/ Subheading

4202.12.40 through 4202.12.80: TRUNKS, SUITCASES, VANITY CASES, ATTACHE CASES, BREIFCASES, SCHOOL SATCHELS AND SIMILAR CONTAINERS, WITH OUTER SURFACE OF TEXTILE MATERIALS:

1. Specify the fiber content by weight in the outer surface textile material.
2. State whether or not the textile material is of pile or tufted construction.

4202.22.35 through 4202.22.80: HANDBAGS WITH OUTER SURFACE OF TEXTILE MATERIALS:

1. Specify the fiber content by weight in the outer surface textile material.
2. State whether or not the product is wholly or in part of braid. If so, indicate the location and use of the braid.
3. State whether or not the textile material is of pile or tufted construction.

4202.32.40 through 4202.32.95: ARTICLES OF A KIND NORMALLY CARRIED IN THE POCKET OR IN THE HANDBAG, WITH OUTER SURFACE OF TEXTILE MATERIALS:

1. Specify the fiber content by weight in the outer surface textile material.
2. State whether or not the textile material is of pile or tufted construction.

4202.92.15 through 4202.92.30: TRAVEL, SPORTS AND SIMILAR BAGS, WITH OUTER SURFACE OF TEXTILE MATERIALS:

Specify the fiber content by weight in the outer surface textile material.

4202.92.60 and 4202.92.90: OTHER CONTAINERS, WITH OUTER SURFACE OF PLASTIC SHEETING OR OF TEXTILE MATERIALS:

If the outer surface is of textile materials, specify the fiber content by weight in that outer surface.

CHAPTER 50
SILK

Heading/ Subheading	
5004 through 5006:	SILK YARN:

1. Specify the fiber content by weight.
2. State whether the yarn is filament silk yarn or yarn spun from silk waste.
3. Indicate whether or not the yarn is put up for retail sale.

5007:	WOVEN FABRICS OF SILK OR OF SILK WASTE:

1. Specify the fiber content by weight.
2. Indicate the presence, and percentage by weight, of silk yarn, noil silk, and other waste silk.
3. Identify the type of weave.
4. Provide the fabric width in centimeters.
5. State whether or not the fabric is composed of yarns of different colors.
6. State whether or not the silk fabric is of a kind for use in the manufacture of neckties. If so, provide the number of warp yarns per centimeter.

CHAPTER 51
WOOL, FINE OR COARSE ANIMAL HAIR; HORSEHAIR YARN AND WOVEN FABRIC

Heading/ Subheading	
5101 through 5105:	WOOL AND ANIMAL HAIR:

1. Identify the animal from which the wool or hair was obtained.
2. If known, identify the specific province or other subdivision of the country wherein the wool or hair originated.
3. If the product is wool:
   a. State whether or not the wool is unimproved (as defined in Additional U.S. Note 2(e) to Chapter 51, HTSUS);
   b. Specify the type symbol by which the wool is bought and sold in the country of origin; and
   c. Specify the grade for each lot of wool (for example, not finer than 40s, finer than 44s) in accordance with current standards promulgated by the Secretary of Agriculture.
4. State whether the wool or hair was shorn or pulled.

Heading/ Subheading	
5101 through 5105:	WOOL AND ANIMAL HAIR—continued:

5. State whether the wool or hair is greasy (including fleece washed) or degreased.

6. State whether or not the wool or hair is carbonized.

7. State whether or not the wool or hair is carded or combed. If the product is combed wool, state whether or not it is tops or combed wool in fragments.

8. Describe any other processing applied to the wool or hair (for example, scouring, burr-picking, willowing, handshaking, beating, sorting).

9. If the wool or hair is subject to duty at a rate per clean kilogram under the HTSUS, provide the net weight of each lot of wool or hair in the condition in which it is shipped and provide the shipper's estimate of the clean yield (as defined in § 151.61(b) of this chapter) of each lot by weight or by percentage.

5106 through 5110:	YARNS OF WOOL OR ANIMAL HAIR:

1. State whether or not the yarn is carded or combed.

2. Specify the fiber content of the yarn by weight.

3. Identify the animal from which the wool or hair in the yarn was obtained.

4. State whether or not the yarn is put up for retail sale.

5111 and 5112:	WOVEN FABRICS OF CARDED OR COMBED WOOL OR FINE ANIMAL HAIR:

1. Specify the fiber content by weight.

2. State whether the wool or fine animal hair is carded or combed and provide the percentage by weight of each.

3. Provide the fabric weight in grams per square meter.

4. Provide the fabric width in centimeters.

5. State whether or not the fabric is hand-woven.

6. State whether or not the fabric is tapestry or upholstery fabric.

7. If the fabric contains man-made fibers, identify the man-made fibers and provide the weights of filament and staple fiber separately.

5113:	WOVEN FABRICS OF COARSE ANIMAL HAIR OR OF HORSEHAIR:

1. Indicate the type of weave.

2. Specify the fiber content by weight.

3. If the fabric contains animal hair, identify the animal (genus and species) from which the hair was obtained.

CHAPTER 52
COTTON

Heading/ Subheading

5201: COTTON, NOT CARDED OR COMBED:

1. State that the cotton was not subjected to any processing operation or, if the cotton was processed, identify the processing.

2. For each lot of cotton, specify its staple length (as defined in § 151.81 of this chapter) by including from the following the statement which properly describes the product

a. This is harsh or rough cotton under 19.05 millimeters (3/4 inch) in staple length;

b. The staple length of this cotton is under 25.4 millimeters (1 inch) and the cotton is other than harsh or rough under 19.05 millimeters (3/4 inch) in staple length;

c. The staple length of this cotton is 25.4 millimeters (1 inch) or more but under 28.575 millimeters (1 1/8 inches);

d. This cotton is harsh or rough having a staple length of 29.36875 millimeters (15/32 inches) or more but under 42.8625 millimeters (1 11/16 inches) and white in color (except cotton of perished staple, grabbots and cotton pickings);

e. This cotton has a staple length of 28.575 millimeters (1 1/8 inches) or more but under 34.925 millimeters (1 3/8 inches) and it is – other than harsh or rough cotton white in color;

f. This cotton has a staple length of 34.925 millimeters (1 3/8 inches) or more but under 42.8625 millimeters (1 11/16 inches) and it is other than harsh or rough cotton white in color; or

g. The staple length of this cotton is 42.8625 millimeters (1 11/16 inches) or more.

3. If known, identify the specific province or other subdivision of the country in which the cotton was grown.

4. Specify the variety of the cotton (for example, Karnak, Gisha, Pima, Tanguis).

5202: COTTON WASTE:

1. Provide the name by which the cotton waste is known (for example, yarn waste, garnetted waste, cotton card strips, cotton comber waste, cotton lap waste, cotton sliver waste, cotton roving waste, cotton fly waste).

2. State whether the length of the cotton staple forming any cotton card strips covered by the invoice is less than 3.016 centimeters (1 3/16 inches) or is 3.016 centimeters (1 3/16 inches) or more.

Heading/ Subheading

5204 through 5207: COTTON SEWING THREAD AND COTTON YARN:

1. Specify the fiber content by weight.
2. State whether the product is of single or of multiple (folded) or cabled yarn.
3. State whether or not the product is put up for retail sale.
4. If the product is sewing thread, provide the weight put up on supports and state whether or not it is dressed and has a final "Z" twist.
5. If the product is not sewing thread, indicate:
   a. Whether the fibers are combed or uncombed;
   b. The metric number (nm) per single yarn; and
   c. Whether or not the yarn is bleached or mercerized.

5208 through 5212: WOVEN FABRICS OF COTTON:

1. Provide the fabric width in centimeters.
2. Specify the fiber content by weight.
3. Specify the type of fabric (for example, poplin, duck, broadcloth).
4. If the fabric is unbleached, bleached, dyed, composed of yarns of different colors, and/or printed, so state.
5. Specify the number of single threads per square centimeter (all ply yarns must be counted in accordance with the number of single threads contained in the yarn).
6. Specify separately the number of warp ends per centimeter and the number of filling picks per centimeter.
7. Provide the fabric weight in grams per square meter.
8. Provide the average yarn number using the following formula:

$$\frac{100\times(\text{total single yarns per square centimeter})}{(\text{number of grams per square meter})}$$

9. Indicate the yarn size or sizes in both the warp and the filling, including the number of plies in each yarn.
10. State whether or not the fibers are combed or carded.
11. State whether the fabric is napped or not napped.
12. Specify the type of weave (for example, plain, twill, sateen, oxford).
13. Specify the type of machine on which the fabric was woven (for example, with jacquard, with swivel, with lappet, with dobby).

CHAPTER 53

OTHER VEGETABLE TEXTILE FIBERS; PAPER YARN AND WOVEN FABRIC OF PAPER YARN

Heading/ Subheading

5301 through 5305: VEGETABLE FIBERS:

1. State whether the vegetable fiber is raw or retted, broken, scutched or otherwise processed.
2. If the vegetable fiber is waste, identify the type of waste (for example, tow, noils, yarn waste).

5306 through 5308: YARNS OF VEGETABLE FIBERS AND PAPER YARN:

1. Specify the fiber content by weight.
2. State whether the yarn is single, multiple (folded) or cabled.

5309: WOVEN FABRICS OF FLAX:

1. Specify the fiber content by weight.
2. State whether the fabric is bleached or unbleached, dyed, printed, or composed of yarns of different colors.
3. Provide the fabric width in centimeters.
4. Identify the type of weave.
5. Provide the fabric weight in grams per square meter.
6. Indicate the number of single yarns per centimeter in the warp and the number of single yarns per centimeter in the filling.
7. Indicate the yarn size or sizes in both the warp and the filling, and state whether the yarns are single or plied.
8. State whether or not the fabric is napped.

5310: WOVEN FABRICS OF JUTE OR OTHER TEXTILE BAST FIBERS (OTHER THAN FLAX, TRUE HEMP AND RAMIE):

1. Specify the fiber content by weight.
2. State whether or not the fabric is unbleached.
3. Provide the fabric width in centimeters.

5311: WOVEN FABRICS OF OTHER VEGETABLE FIBERS OR OF PAPER YARN:

1. Specify the fiber content by weight.
2. Provide the fabric width in centimeters.
3. Identify the type of weave.
4. Provide the fabric weight in grams per square meter.

Heading/ Subheading 5311: WOVEN FABRICS OF OTHER VEGETABLE FIBERS OR OF PAPER YARN—continued:

5. Indicate the number of single yarns per centimeter in the warp and the number of single yarns per centimeter in the filling.

6. Indicate the yarn size or sizes in both the warp and the filling, and state whether the yarns are single or plied.

7. State whether or not the fabric is napped.

CHAPTER 54
MAN-MADE FILAMENTS

Heading/ Subheading 5401 through 5406: MAN-MADE FILAMENT YARN (INCLUDING MONOFILAMENT) AND STRIP:

1. For all products, specify the following:

a. The filament and fiber content by weight;

b. Whether the product is single or plied (multiple, folded or cabled);

c. Whether or not the product is put up for retail sale (as defined in Note 4 to Section XI, HTSUS);

d. Whether or not the product is sewing thread (as defined in Note 5 to Section XI, HTSUS); and

e. Whether the product contains only filament or a combination of filament and spun staple fibers, and, if it contains such a combination, provide the percentages of filament and spun staple fibers by weight.

2. For products other than sewing thread, specify:

a. Whether or not the product is a high tenacity yarn;

b. Whether the product is monofilament, multifilament or strip;

c. Whether or not the product is texturized;

d. The yarn number in decitex;

e. Whether or not the product is twisted and, if so, the number of turns per meter;

f. The cross-sectional dimension in millimeters (for monofilament only); and

g. The width in millimeters (for strip only). This measurement must be of the strip in its folded or twisted condition, if so imported.

Heading/ Subheading	
5407 and 5408:	WOVEN FABRICS OF MAN-MADE FILAMENT YARN (INCLUDING MONOFILAMENT) AND STRIP:

1. Provide the fabric width in centimeters.
2. If the fabric is unbleached or bleached, dyed, of yarns of different colors, and/or printed, so state.
3. Specify the textile content of the fabric by weight. If the fabric is composed of more than one material (textile or non-textile), list the percentage by weight of each material. In the case of man-made textile materials, treat them separately according to whether they are or staple fiber, even if they are of the same generic chemical composition.
4. State whether or not the yarns are high tenacity, and, if twisted, specify the number of turns per meter in each yarn.
5. Indicate the yarn size or sizes in both the warp and the filling, including the number of plies in each yarn.
6. Specify the type of weave (for example, plain twill, sateen).
7. Specify the type of machine on which the fabric was woven (for example, with jacquard, with swivel, with lappet, with dobby).
8. Specify separately the number of warp ends per centimeter and the number of filling picks per centimeter.
9. Provide the fabric weight in grams per square meter.
10. Provide the average yarn number using the following formula:

$$\frac{100\times(\text{total single yarns per square centimeter})}{(\text{number of grams per square meter})}$$

11. If the fabric contains staple fiber yarns, state whether or not the fibers are combed or carded.
12. If the fabric contains polyester filament yarns, state whether the polyester filament is textured or non-textured or both and specify the percentage by weight of each such filament in the fabric.

CHAPTER 55
MAN-MADE STAPLE FIBERS

Heading/ Subheading

5501 and 5502: SYNTHETIC AND ARTIFICIAL FILAMENT TOW:

1. Provide the length of the tow in meters.
2. Specify the twist (number of turns per meter).
3. Provide the filament measurement in decitex.
4. State whether or not the tow is drawn.
5. Provide the total measurement of the tow in decitex.
6. Specify the constituent filament(s) by name (for example, nylon, polyester, viscose rayon) and weight.

5503 5504 5506 and 5507: MAN-MADE STAPLE FIBERS:

1. Specify the fiber content by weight.
2. State whether or not the fiber is carded, combed or otherwise processed for spinning.

5505: WASTE OF MAN-MADE FIBERS:

1. Specify the fiber content by weight.
2. Identify the type of waste (for example, noils, rovings, yarn waste, garnetted stock), and indicate the intended use of the waste.

5508 through 5511: YARN OF MAN-MADE STAPLE FIBERS:

1. Specify the fiber content by weight.
2. State whether the product is single or plied (multiple, folded or cabled).
3. State whether or not the product is put up for retail sale (as defined in Note 4 to Section XI, HTSUS).
4. State whether or not the product is sewing thread (as defined in Note 5 to Section XI, HTSUS).
5. State whether the product contains only spun staple fibers or is a combination of spun staple fibers and filament, and, if a combination of spun staple fibers and filament, specify the percentages of spun staple fibers and filament by weight.

Heading/ Subheading

5512 through 5516:

WOVEN FABRICS OF MAN-MADE STAPLE FIBERS:

1. Provide the fabric width in centimeters.
2. If the fabric is unbleached or bleached, dyed, of yarns of different colors, and/or printed, so state.
3. Specify the textile content of the fabric by weight. If the fabric is composed of more than one material (textile or non-textile), list the percentage by weight of each material. In the case of man-made textile materials, treat them separately according to whether they are artificial or synthetic and filament (or strip) or staple fiber, even if they are of the same generic chemical composition.
4. State whether or not the yarns are high tenacity, and, if twisted, specify the number of turns per meter in each yarn.
5. Indicate the yarn size or sizes in both the warp and the filling, including the number of plies in each yarn.
6. Specify the type of weave (for example, plain, twill, sateen).
7. Specify the type of machine on which the fabric was woven (for example, with jacquard, with swivel, with lappet, with dobby).
8. Specify separately the number of warp ends per centimeter and the number of filling picks per centimeter.
9. Provide the fabric weight in grams per square meter.
10. Provide the average yarn number using the following formula:

$$\frac{100\times(\text{total single yarns per square centimeter})}{(\text{number of grams per square meter})}$$

11. If the fabric contains staple fiber yarns, state whether or not the fibers are combed or carded.
12. If the fabric contains filament yarns, state whether they are textured or not textured.

CHAPTER 56

WADDING, FELT AND NONWOVENS; SPECIAL YARNS, TWINE, CORDAGE, ROPES AND CABLES AND ARTICLES THEREOF

Heading/ Subheading

5601:

WADDING AND ARTICLES THEREOF, TEXTILE FLOCK AND DUST, AND MILL NEPS:

1. Specify the fiber content by weight.
2. State how the product is packed or packaged (for example, in rolls, in blister packs).

Heading/ Subheading

5602: FELT:

1. Specify the fiber content by weight.
2. Identify the construction of the product (for example, needleloomed or stitch-bonded, laminated).
3. If the felt is impregnated, coated, covered or laminated with a substance, so state and identify the substance.
4. If the felt is coated, covered or laminated with plastics or rubber, provide the weights of the textile portion and of the plastics or rubber portion.
5. If the felt is coated, covered or laminated with plastics or rubber, state whether these substances are compact or cellular and state whether the plastics or rubber is on one or both sides.

5603: NONWOVENS:

1. Specify the fiber content by weight.
2. State whether the nonwoven material consists of filament or of staple fibers.
3. Indicate the method of manufacture of the nonwoven fabric (for example, thermal bonded, mechanical entanglement, wet or dry laid).
4. If the nonwoven fabric is impregnated, coated, covered or laminated with a substance, so state and identify the substance.
5. If the nonwoven fabric is coated, covered or laminated with plastics or rubber, state whether the substance is compact or cellular. If both types are used, so state, and indicate the order in which they occur in relation to the nonwoven fabric.
6. Indicate whether the coating, covering or laminating substance is on one or both sides of the nonwoven fabric.

5604: RUBBER THREAD AND CORD, TEXTILE COVERED; TEXTILE YARN, AND STRIP AND THE LIKE OF HEADING 5404 OR 5405, IMPREGNATED, COATED, COVERED OR SHEATHED WITH RUBBER OR PLASTICS:

If the product is textile yarn or strip or the like, impregnated, coated, covered or sheathed with rubber or plastics:
1. Identify the material used to impregnate, coat, cover or sheath the textile portion and provide its percentage of the total weight of the product;
2. Specify the fiber content of the product by weight; and
3. State whether or not the textile portion consists of high tenacity yarn.

Heading/ Subheading	
5605:	TEXTILE YARN OR STRIP OR THE LIKE OF HEADING 5404 OR 5405, COMBINED OR COVERED WITH METAL (METALIZED YARN):

1. State whether or not the yarn is gimped.
2. State whether or not the yarn is reinforced with metal thread.
3. Specify the fiber content of the yarn by weight.
4. If the yarn is twisted, so state and specify the number of turns per meter.

5606:	GIMPED YARN AND GIMPED STRIP AND THE LIKE OF HEADING 5404 OR 5405 (OTHER THAN GIMPED METALIZED YARN AND GIMPED HORSEHAIR YARN), CHENILLE YARN AND LOOP WALE-YARN:

1. State whether the product is gimped yarn or strip, chenille yarn, or loop wale-yarn.
2. Specify the fiber content by weight.

5607:	CORDAGE, ROPES, CABLES AND TWINE:

1. Specify the fiber content by weight.
2. State whether the construction is:
   a. Baler or binder twine;
   b. Stranded rope (3 or 8 strand); or
   c. Braided or plaited.
3. Specify the decitex for the product.
4. If made from strip, indicate the following:
   a. The width of the strip in centimeters;
   b. Whether the strip is fibrillated or nonfibrillated; and
   c. The weight of any non-fibrillated strip as a percentage of the total weight of the product.
5. If made of coir, indicate the number of plies.
6. If the product is binder or baler twine:
   a. Identify the type of twist in the twine (S or Z).
   b. State whether or not the twine is coated with oil or treated with repellant to resist rot, insects or rodents.
   c. Provide the minimum breaking force of the twine in decanewtons.
   d. Provide the minimum knot breaking force of the twine in decanewtons.

Heading/ Subheading

5608: NETTING AND NETS:

1. Specify the construction and size of the mesh.
2. Specify the stretch mesh size.
3. Specify the fiber content by weight.
4. Specify the size or thickness of the yarns used in the netting or net.
5. State the intended use of the product.
6. State whether the product is netting material or a finished net.

5609: OTHER ARTICLES OF YARN, STRIP OR THE LIKE OF HEADING 5404 OR 5405, TWINE, CORDAGE, ROPE OR CABLES:

1. State the intended use of the article.
2. Provide a breakdown of the component materials of the article by weight.

CHAPTER 57
CARPETS AND OTHER TEXTILE FLOOR COVERINGS

Heading/ Subheading

5701: 1. Specify the fiber content by weight.
2. Indicate whether the product is hand- or machine-knotted or hand-hooked.
3. Indicate whether the product is of pile or flat construction.
4. Indicate whether or not the product incorporates a preexisting base.

5702: 1. Specify the fiber content by weight.
2. Indicate whether the product is hand- or machine-woven.
3. Indicate whether the product is of pile or flat construction.
4. If the product is hand-loomed chenille, so state.

5703: 1. Specify the fiber content by weight.
2. Indicate whether or not the product is hand-hooked.
3. Specify the area of the product in square meters.
4. Indicate whether or not the product incorporates a preexisting base.

5704: 1. Specify the fiber content by weight.
2. Indicate whether or not the product is tufted or flocked.

Heading/ Subheading	
5705:	1. Specify the fiber content by weight. 2. Indicate whether or not the product incorporates a pre-existing base.

CHAPTER 58

SPECIAL WOVEN FABRICS; TUFTED TEXTILE FABRICS; LACE; TAPESTRIES; TRIMMINGS; EMBROIDERY

Heading/ Subheading	
5801 and 5802:	WOVEN PILE FABRICS AND CHENILLE FABRICS, OTHER THAN FABRICS OF HEADING 5802 OR 5806: 1. Identify the type of pile (warp or weft). 2. Provide the fabric width in centimeters. 3. Specify the fiber content by weight in the pile and in the ground fabric (separately broken out). 4. State whether the pile is cut or uncut. 5. Provide the fabric weight in grams per square meter.
5803:	GAUZE (OTHER THAN NARROW FABRICS OF HEADING 5806): 1. Specify the fiber content by weight. 2. Provide the width of the gauze in centimeters. 3. Describe how the gauze is woven (type of weave).
5804:	TULLES AND OTHER NET FABRICS (NOT INCLUDING WOVEN, KNITTED OR CROCHETED FABRICS), AND LACE IN THE PIECE, IN STRIPS OR IN MOTIFS: 1. Specify the fiber content by weight. 2. State whether the product is a tulle or other net fabric, mechanically made lace, or hand-made lace. 3. If the product is a tulle or other net fabric, indicate the type of net construction (for example, tulle, bobinot, plain filet net, mechelin net) and the type of machine used to produce the net. 4. If the product is mechanically made lace, indicate the type of lace (for example, needle point, bobbin, crochet) and the type of machine used to make the lace (for example, leavers, nottingham, bobinet jacquard).
5805:	HAND-WOVEN AND NEEDLE-WORKED TAPESTRIES: 1. Specify the fiber content by weight. 2. Indicate whether hand-woven or needle-worked.

Heading/ Subheading

5806: NARROW WOVEN FABRICS (OTHER THAN GOODS OF HEADING 5807) AND NARROW FABRICS CONSISTING OF WARP WITHOUT WEFT ASSEMBLED BY MEANS OF AN ADHESIVE (BOLDUCS):

1. If the product is a narrow fabric consisting of warp without weft assembled by means of an adhesive (bolduc), so state.
2. If the product is other than a bolduc:
   a. Specify the fiber content by weight.
   b. Provide the fabric width in centimeters.
   c. State whether or not the fabric has woven selvages or false selvages (for example, cut with a hot knife gummed edges).
   d. State whether or not the fabric has a pile construction.
   e. Specify the amount of elastomeric yarn or rubber thread by weight in the fabric, if any.
   f. If the product is a ribbon, so state and state whether the ribbon is suitable for the manufacture of typewriter or similar machine ribbons of heading 9612.

5807: LABELS, BADGES AND SIMILAR ARTICLES:

1. Indicate how the article is used.
2. If the article is in the piece, so state.
3. If the article is cut to shape or size, indicate whether it has hemmed or finished edges.
4. State whether the article is woven or not woven.
5. Specify the fiber content by weight.

5808: BRAIDS AND ORNAMENTAL TRIMMINGS; TASSELS, POMPONS AND SIMILAR ARTICLES:

1. Specify the fiber content by weight.
2. If the product is a trimming, state where and how it is to be used and state whether it is in the piece or cut to size.

5809: WOVEN FABRICS OF METAL THREAD AND WOVEN FABRICS OF METALIZED YARN OF HEADING 5605, OF A KIND USED IN APPAREL, AS FURNISHING FABRICS OR FOR SIMILAR PURPOSES:

1. Specify the fiber content by weight, reporting metalized yarn as a single textile material the weight of which is to be taken as the aggregate of the weights of its components.
2. Provide the fabric width in centimeters.
3. Indicate the end use of the fabric (for example, wearing apparel, home furnishings).

Heading/ Subheading

5810: EMBROIDERY:

1. State whether or not there is a visible ground fabric on the front or back.
2. Describe the ground fabric if visible (for example, knit, woven, narrow) and, if the product is other than a label, badge, emblem or motif, provide the weight and width of the ground fabric.
3. Provide the weight of the product in grams per square meter.
4. If the product is an embroidered label, badge or emblem, provide the following additional information:
   a. The dimensions of the product in centimeters;
   b. The percentage of embroidery by area; and
   c. Whether the item has a heat seal backing.

5811: QUILTED TEXTILE PRODUCTS IN THE PIECE:

1. Describe the construction of each fabric layer or component.
2. Specify the fabric fiber content by weight.
3. State how the product is put up (for example, in rolls, flat-folded, cut to a specific size for a particular use).

CHAPTER 59

IMPREGNATED, COATED, COVERED OR LAMINATED TEXTILE FABRICS; TEXTILE ARTICLES OF A KIND SUITABLE FOR INDUSTRIAL USE

Heading/ Subheading

5901: TEXTILE FABRICS COATED WITH GUM OR AMYLACEOUS SUBSTANCES, TRACING CLOTH, PREPARED PAINTING CANVAS, AND BUCKRAM AND SIMILAR STIFFENED TEXTILE FABRICS:

1. Identify the composition of the coating substance.
2. Describe the fabric construction and specify the fiber content by weight.

5902: TIRE CORD FABRIC OF HIGH TENACITY YARN OF NYLON OR OTHER POLYAMIDES, POLYESTERS OR VISCOSE RAYON:

1. Specify the fiber content of the yarns by weight.
2. Describe the construction of the fabric.

Heading/ Subheading

5903: TEXTILE FABRICS IMPREGNATED, COATED, COVERED OR LAMINATED WITH PLASTICS, OTHER THAN THOSE OF HEADING 5902:

1. Describe the fabric construction and specify the fiber content by weight.
2. Identify the type of plastics used.
3. Provide the respective weights of plastics and textile.
4. Provide the weight of the product per square meter.
5. If the textile fabric is coated or covered on one or both sides, so state.
6. State whether the plastics is compact or cellular.
7. If both compact and cellular plastics are used, so state and specify in what order to the textile.
8. If the textile fabric is made of woven polyethylene strips, indicate the color or tint of the strips and the color of the plastic coating or laminating film.
9. State how the product is shipped (for example, in rolls or bolts) and provide the length, width and, where applicable, thickness of the product in metric units.

5905: TEXTILE WALL COVERINGS:

1. State how the product is put-up.
2. Specify the width in centimeters.
3. Describe the construction of the product.
4. If the product is backed with permanently affixed paper, so state.
5. If the back of the product has been treated or coated with any substance to permit pasting, so state and identify this substance.

5906: RUBBERIZED TEXTILE FABRICS, OTHER THAN THOSE OF HEADING 5902:

1. Provide the product width in centimeters.
2. Describe the construction of the textile portion (for example, knitted, woven).
3. Specify the fiber content by weight.
4. Identify the rubber (natural or synthetic-type) used in the product.
5. Provide the weight of the product in grams per square meter.
6. Provide the respective weights of the textile and rubber portions.
7. If the rubber is on one or both surfaces of the product or in the middle, so state.
8. State whether the rubber is compact or cellular.

Heading/ Subheading	
5907:	TEXTILE FABRICS OTHERWISE IMPREGNATED, COATED, COVERED OR LAMINATED, AND PAINTED CANVAS (THEATRICAL SCENERY, STUDIO BACK-CLOTHS OR THE LIKE): 1. Describe the construction of the base fabric. 2. Specify the fiber content by weight. 3. Indicate the end use of the product. 4. Identify the impregnation, coating, covering or laminate. 5. If the coating substance (for example, flock) forms a design or covers the entire surface, so state. 6. Provide the respective weights of the textile and non-textile materials.
5910:	TRANSMISSION OR CONVEYOR BELTS AND BELTING OF TEXTILE MATERIAL: 1. State whether the product is belting material or a finished belt (that is, closed loop, endless, fitted with linking devices or cut to exact length). 2. Indicate the cross-section shape of the belt or belting (for example, trapezoidal-V-, flat, round). 3. If the belt or belting will be used as a conveyor, so state. 4. If the belt or belting will be used in power transmission, so state. 5. State whether or not the belt is synchronous. 6. Identify the type of device, machine or engine in which the belt or belting will be used. 7. Describe the composition and construction of the belt or belting in terms of the following: a. The identity and weight of each textile fiber; b. The identity of any non-textile material; c. The respective weights of the textile and non-textile component materials; d. The number of plies and the order in which they appear; and e. The overall thickness and the width in centimeters.
5911:	TEXTILE PRODUCTS AND ARTICLES FOR TECHNICAL USES: 1. Indicate the end use of the product. 2. Describe the construction of the product and specify the fiber content by weight. 3. State whether the product is in the piece, endless, fitted with linking devices, cut-to-size, or made up. 4. If used in, or in conjunction with a machine, state the type and use of such machine. 5. If the product is a fabric or felt of a kind used in papermaking or similar machines, provide the weight of the product is grams per square meter.

CHAPTER 60
KNITTED OR CROCHETED FABRICS

Heading/ Subheading

6001: PILE FABRICS, KNITTED OR CROCHETED:

1. Specify by weight the fiber content of the pile and the fiber content the ground fabric, broken out separately.
2. Indicate the type of pile construction (for example, long, looped, terry).
3. Provide the fabric weight in grams per square meter.

6002: OTHER KNITTED OR CROCHETED FABRICS:

1. If knitted, state whether the fabric is of warp or weft knit construction.
2. Identify the specific construction of the fabric (for example, raschel, tricot, rib, jersey).
3. Specify the fiber content by weight.
4. Provide the fabric width in centimeters.
5. Specify the percentage by weight of elastomeric yarn or rubber thread contained in the fabric, if any.

CHAPTER 61
ARTICLES OF APPAREL AND CLOTHING ACCESSORIES, KNITTED OR CROCHETED

GENERAL REQUIREMENTS

1. Indicate the style number, the gender of the wearer, the common and commercial designation, and the sizing of the garment or clothing accessory. All articles and components thereof, including lining, trim, and interlining, must be identified as to composition (including fiber content by weight), construction, individual and aggregate weights, and location on the product. For garments with an outer shell of more than one construction or material (textile or non-textile), give the relative weight, percentage value, and visible surface area of each component. For outer shell components which are blends of different materials, give the relative weight of each material in the component.

2. For two or more garments which are imported together and sold as a unit, indicate whether all components are of the same fabric construction, style, color, and composition and of corresponding or compatible size. Indicate if any material appears on one component and not on another component.

3. For garments which cover the upper torso, identify the area of the body which is covered, and indicate the presence or absence of sleeves or an opening at the neck, the type (full or partial) and location of the opening and the means of closure (for example, zipper, buttons, snaps).

4. For each garment, indicate the type of knit construction (for example, jersey, rib, jacquard) and specify any specialized fabric (for example, napped, pile, terry).

5. For garments which cover the upper torso, indicate the stitch count per centimeter in both the horizontal and vertical directions and the stitch count per two centimeters in the horizontal direction.

ADDITIONAL REQUIREMENTS FOR SPECIFIC MERCHANDISE

Suits and suit-type jackets: Indicate the jacket construction with respect to the number of panels (exclusive of the sleeves, facing and collar), their location, as well as the location and direction of the seams joining them.

Garments made from fabrics having an application of rubber or plastics: Identify the rubber or plastic substance on the fabric and the portion(s) of the garment made from that fabric.

Coats and jackets: Indicate the garment length (for example, hip-length, three-quarter length). Indicate whether the garment has a lining, and if so, specify the type of lining.

Garments with bibs: Indicate the height of the front bib rise, noting its extension upwards above the natural waistline. Where the bib rise is not uniform, provide all bib measurements in centimeters.

Parts of playsuits: Indicate the use of the garment (for example, as a shirt). Describe the means of physical attachment to the complementary garment imported as parts of playsuits and identify the complementary garment (for example, shorts).

Babies' garments and clothing accessories: Indicate whether the articles are for young children 0 to 24 months of age and whether the wearer has a body height not exceeding 86 centimeters.

Men's and boys' swimwear: Indicate whether the garment has a full liner and specify its fiber content. State whether the article has an elasticized waistband and a functional drawstring.

Shirts and blouses: Indicate the presence or absence of pockets below the waist, a ribbed waistband or other means of tightening at the bottom of the garment, and whether the garment has a neckline opening. Indicate the direction of the closure (left over right or right over left).

Tank tops: Indicate the width of the shoulder straps in centimeters, and if the garment has neck openings, pockets, or any belt treatment, so state.

T-shirts: Indicate whether the garment is all white or colored. Describe the construction of the sleeves, neckline and bottom. Indicate whether the garment has pockets, trim, embroidery, or pieced fabric construction. (See also heading 6109.)

Sweatshirts: Indicate the presence or absence of a snug fitting waist and cuffs.

Tops: Indicate the extent of the body coverage.

Sweaters: Indicate the presence or absence of a lining and the type of lining.

Heading/ Subheading

6108.21 and 6108.22: WOMEN'S OR GIRLS' BRIEFS AND PANTIES:

Indicate whether or not the garments are disposable after one-time use.

T-SHIRTS, SINGLETS, TANK TOPS AND SIMILAR GARMENTS, KNITTED OR CROCHETED:

6109.10.0007: State whether the men's or boys' singlet is white.

6109.10.0009: Identify the specific type of garment.

6109.10.0037: Identify the specific type of garment and specify its color.

6109.90.1047: Identify the garment as a thermal undershirt.

6109.90.1510 and 6109.90.1530: Indicate whether or not the garment is underwear with long sleeves.

6113.00.0005 6113.00.0010 and 6113.00.0012: GARMENTS, MADE UP OF KNITTED OR CROCHETED FABRICS, HAVING AN OUTER SURFACE IMPREGNATED, COATED, COVERED, OR LAMINATED WITH RUBBER OR PLASTICS WHICH COMPLETELY OBSCURES THE FABRIC:

Provide the generic names of both the rubber or plastics and textile material present in the shell.

6115.11.00: PANTY HOSE AND TIGHTS:

Provide the single yarn measurement in decitex.

6115.20.00: WOMEN'S FULL- OR KNEE-LENGTH HOSIERY MEASURING PER SINGLE YARN LESS THAN 67 DECITEX:

Provide the single yarn measurement in decitex.

6115.92 through 6115.99: OTHER HOSIERY, INCLUDING STOCKINGS FOR VARICOSE VEINS, AND FOOTWEAR WITHOUT APPLIED SOLES:

Indicate the presence or absence of net or lace on the hosiery.

GLOVES, MITTENS AND MITTS, KNITTED OR CROCHETED:

Heading/ Subheading	
6116.10.18 and 6116.10.45:	1. Describe the construction and method of manufacture of the article. 2. Specify the percentage by weight of plastics or rubber in the impregnated, coated or covered portion of the article. 3. If the article is impregnated, coated or covered on the palm only, so state.
6116.10.70:	Specify the percentage by weight of plastics or rubber in the article.
6116.10.90:	1. Specify the percentage by weight of plastics or rubber in the impregnated, coated or covered portion of the article. 2. If the article is impregnated, coated or covered on the palm only, so state.
6116.91.00:	Identify the type of animal hair of which the article is made.
6116.92.60:	State whether or not the article has fourchettes.
6116.92.90:	State whether or not the article is seamless.
6116.93.60 and 6116.93.90:	State whether or not the article has fourchettes.
6117.10:	SHAWLS, SCARVES, MUFFLERS, MANTILLAS, VEILS AND THE LIKE: Provide the dimensions in centimeters.
6117.80:	OTHER MADE-UP CLOTHING ACCESSORIES: When the use of the article is not evident from the name of the article as it would be in the case of items such as earmuffs or belts, describe how it is used (for example, wrapped around the head, pinned to a dress).
6117.90:	PARTS OF GARMENTS OR CLOTHING ACCESSORIES: Name the garment or accessory of which they are a part (for example, parts of sweaters, shirts, trousers).

CHAPTER 62

ARTICLES OF APPAREL AND CLOTHING ACCESSORIES NOT KNITTED OR CROCHETED

General Requirements

1. Indicate the style number, the gender of the wearer, the common and commercial designation, and the sizing of the garment or clothing accessory. All articles and components thereof, including lining, trim, and interlining, must be identified as to composition (including fiber content by weight), construction, individual and aggregate weights, and location on the product. For garments with an outer shell of more than one construction or material (textile or non-textile), give the relative weight, percentage value, and visible surface area of each component. For outer shell components which are blends of different materials, give the relative weight of each material in the component.

2. For two or more garments which are imported together and sold as a unit, indicate whether all components are of the same fabric construction, style, color, and composition and of corresponding or compatible size. Indicate if any material appears on one component and not on another other component.

3. For each garment, identify the area of the body which is covered, and indicate the presence or absence of sleeves or an opening at the neck, the type (full or partial) and location of the opening and the means of closure (for example, zipper, buttons, snaps).

Additional Requirements for Specific Merchandise

Suits and suit-type jackets: Indicate the jacket construction with respect to the number of panels (exclusive of the sleeves, facing and collar), their location, as well as the location and direction of the seams joining them.

Women's and girls' woven blouses, shirts and shirtblouses: Indicate the presence or absence of pockets below the waist and a ribbed waistband or other means of tightening at the bottom of the garment. Indicate the direction of the closure (left over right or right over left).

Garments made from fabric having an application of rubber or plastics: Identify the rubber or plastic substance on the fabric and the portion(s) of the garment made from that fabric. In the case of garments entered as water resistant, specify the water resistance rating of the fabric.

Coats and jackets: Indicate the garment length (for example, hip-length, three-quarter length). Indicate whether the garment has a lining and if so, specify the type of lining.

Garments with bibs: Indicate the height of the front bib rise, noting its extension upwards above the natural waistline. Where the bib rise is not uniform, provide all bib measurements in centimeters.

Parts of playsuits: Indicate the use of the garment (for example, as a shirt). Describe the means of physical attachment to the complemen-

tary garment imported as parts of playsuits and identify the complementary garment (for example, shorts).

Babies' garments and clothing accessories: Indicate whether the articles are for young children 0 to 24 months of age and whether the wearer has a body height not exceeding 86 centimeters.

Woven cotton and man-made fiber shirts, blouses, dresses, nightdresses, nightshirts and pajamas: State whether or not the fabric is dyed or printed.

Men's woven shirts: Indicate whether the garment has an opening at the neckline and if so, whether it is full or partial.

Men's and boys' swimwear: Indicate whether the garment has a full liner and specify its fiber content. State whether the article has an elasticized waistband and a functional drawstring.

Tops: Indicate the extent of body coverage.

Heading/ Subheading

6201.12.10
6201.13.10
6201.92.10
6201.93.10
6202.12.10
6202.13.10
6202.92.10
and
6202.93.10: DOWN GARMENTS:

1. Specify the total weight of the garment.
2. Specify the total weight of feathers, if any.
3. Specify the total weight of the down.

6210.10: GARMENTS OF FELT OR NONWOVEN FABRICS:

1. Specify where the garment is to be used (for example, in hospitals, in asbestos plants).
2. State whether or not the garment is disposable.

6210.20.1010
6210.20.2010
6210.30.1010
6210.30.2010
6210.40.1010
6210.40.2010
6210.50.1010
and
6210.50.2010: GARMENTS HAVING AN OUTER SURFACE IMPREGNATED, COATED, COVERED, OR LAMINATED WITH RUBBER OR PLASTICS MATERIAL WHICH COMPLETELY OBSCURES THE UNDERLYING FABRIC:

Provide the generic names of both the rubber or plastics and the textile.

6211.20.10: DOWN SKI-SUITS:

1. Specify the total weight of the garment.
2. Specify the total weight of feathers, if any.
3. Specify the total weight of the down.

Heading/ Subheading	
6212.10.10:	BRASSIERES CONTAINING LACE, NET OR EMBROIDERY: 1. Indicate the type of lace used, if any. 2. Indicate whether certain areas of the bra are embroidered.
6213:	HANDKERCHIEFS: Provide the dimensions in centimeters.
6214:	SHAWLS, SCARVES, MUFFLERS, MANTILLAS, VEILS AND THE LIKE: Provide the dimensions in centimeters.
	GLOVES, MITTENS AND MITTS:
6216.00.12 and 6216.10.18:	1. Indicate which fabric portions of the article are impregnated, coated or covered with plastics or rubber. 2. Describe the construction and method of manufacture of the article. 3. Specify the percentage by weight of plastics or rubber in the impregnated, coated or covered portion of the article. 4. If the article is impregnated, coated or covered on the palm only, so state.
6216.00.28:	Specify the percentage by weight of plastics or rubber in the article.
6216.00.32:	Specify the percentage by weight of plastics or rubber in the impregnated, coated or covered portion of the article.
6216.00.39:	State whether or not the article has fourchettes.
6216.00.52:	State whether or not the article has fourchettes.
6217.10:	OTHER MADE-UP CLOTHING ACCESSORIES: When the use of the article is not evident from the name of the article as it would be in the case of items such as earmuffs or belts, describe how it is used (for example, wrapped around the head, pinned to a dress).
6217.90:	PARTS OF GARMENTS AND CLOTHING ACCESSORIES: Identify the article of which the product is a part.

CHAPTER 63

OTHER MADE UP TEXTILE ARTICLES; NEEDLECRAFT SETS; WORN CLOTHING AND WORN TEXTILE ARTICLES; RAGS

Heading/ Subheading

6301: BLANKETS AND TRAVELING RUGS:

1. Specify the fiber content by weight.
2. Provide the dimensions in meters.
3. State whether or not the article is woven.
4. If the article is an electric blanket, so state.

6302: BED, TABLE, TOILET AND KITCHEN LINEN:

1. Describe the construction of the article (for example, woven, knitted or crocheted, pile, tufted).
2. Specify the fiber content by weight.
3. If the article is bed linen:
   a. State whether or not it is printed:
   b. Identify the presence of any embroidery, lace, braid, edging, trimming, piping or applique work; and
   c. State whether it is napped or not napped.

6303: CURTAINS, BLINDS AND VALANCES:

1. Identify the fabric construction of the product.
2. Specify the fiber content by weight.

6304: BEDSPREADS AND OTHER FURNISHING ARTICLES:

1. Identify the fabric construction.
2. Specify the fiber content by weight.
3. If the article is a bedspread, state whether or not it contains embroidery, lace, braid, edging, trimming, piping or applique work.

6306.22.1000: BACKPACKING TENTS:

1. Identify the tent by specific type (for example, 4-person dome tent, 2-person A-line, wall).
2. Identify each material component of the tent and its location (for example, net windows or doors, woven nylon walls).
3. Provide the net weight of each component.
4. Provide the total net weight of the tent and all accessories necessary to pitch the tent. If the tent is incomplete (for example, a shell only without poles), provide both the weight of the imported articles and the total net weight of the tent plus all accessories necessary to pitch it when it is complete.
5. Provide the open dimensions of the tent and its shape (for example, 5 feet by 7 feet by 40 inches, A-line). If the tent is other than rectangular, provide the measurements necessary to compute the square footage (for example, for a hexagonal dome, provide the diameter point-to-point and side-to-side and the length of the sides).

Heading/
Subheading

6306.22.1000: BACKPACKING TENTS—continued:

6. Indicate the shape (for example, cylindrical) and dimensions of the tent as it will be carried. If other than cylindrical, provide the measurements necessary to compute cubic inches.

6307: OTHER MADE UP TEXTILE ARTICLES:

1. State how the article is used.
2. Specify the fiber content by weight.

CHAPTER 64

FOOTWEAR, GAITERS AND THE LIKE; PARTS OF SUCH ARTICLES

EXPLANATION OF CERTAIN TERMS USED IN HEADING 6406 INVOICING REQUIREMENTS

The explanations set forth below, although accurately reflecting the position of the Customs Service, are not intended to reflect the full tariff meaning of those terms. If further explanation of these or other terms used in the invoicing requirements for heading 6406 is necessary, or if their application to a particular product is not clear, the exporter or the importer of record should contact Customs for clarification prior to entry of the merchandise.

Composition leather is made by binding together leather fibers or small pieces of natural leather. It does not include imitation leathers not based on natural leather.

External surface means the surface which will be seen in the finished footwear when it is worn.

Leather refers to the tanned skin of any animal from which the hair or fur (if any) has been removed. Tanned skins coated with rubber and/or plastics are "leather" only if that coating is less than .15 millimeter thick.

Related items include: removable insoles and heel cushions, hose protectors, and similar articles; and gaiters, spats, puttees, leg warmers, leggings, and similar articles. They do not include: tights, socks, or stockings, or anything in general which covers most of the foot; special insoles, arch supports or other orthopedic appliances made to measure for one individual; simple protectors or devices which are designed to reduce pressure on certain parts of the foot and which are usually attached to the foot itself (for example, bunion pads); shin-guards and similar protective sports articles; or knee or ankle supports made of elastic fabric.

Rubber and/or plastics includes any textile material whose external surface is coated or covered with rubber or plastics if this coating or covering can be seen with the naked eye with no account being taken of any

resulting change of color. Examples include woven and non-woven fabrics coated with polyvinyl chloride or polyurethane which are embossed to look like grain leather.

Textile materials include fabrics of cotton, other vegetable fiber, wool, hair, silk, or man-made fiber, and any such fabrics coated or covered with rubber or plastics if the rubber or plastics cannot be seen with the naked eye with no account being taken of any resulting change in color.

Upper refers to the part which covers the foot (and leg) whether or not affixed to an inner sole or another sole component (but without an outersole). Boot liners are, therefore, essentially parts of (linings of) uppers.

Heading/ Subheading

6406.10: UPPERS AND PARTS THEREOF (EXCEPT STIFFENERS):

1. If the product is an upper or a part thereof which will be visible in the finished footwear when worn, specify the percentage of external surface area (excluding accessories and reinforcements) which is:

Leather	a.	%
Composition leather	b.	%
Rubber and/or plastics	c.	%
Textile materials	d.	%
Other (specify:_____)	e.	%
	Total	100%

2. If the product incorporates any accessories or reinforcements, so state and identify each by type and constituent material.

3. If any leather identified at a. under 1. above is coated or laminated with rubber and/or plastics, so state and, if coated:

a. If the coating is less than 0.1 millimeter in thickness, so state; or

b. If the coating is 0.1 millimeter or more in thickness, specify the thickness of the coating to the nearest hundredth of a millimeter.

4. If the product is an upper, state whether or not it has a mostly closed bottom (a layer of material between most of the bottom of the foot and the ground). If it does have a mostly closed bottom:

a. State whether or not the upper has been shaped by lasting, molding or otherwise but not by simply closing at the bottom; and

b. If the upper has been shaped by lasting, molding or otherwise, describe the shaping performed.

5. State whether or not the shipment includes matching heel pads or other parts of the footwear into which any uppers covered by the shipment will be incorporated, and identify any such parts.

Heading/ Subheading

6406.10: UPPERS AND PARTS THEREOF (EXCEPT STIFFENERS)—continued:

6. If the product is an upper and is of textile materials (that is, the percentage at d. is the largest percentage specified under 1. above), then specify:

a. The percentage of external surface area (including any leather, rubber or plastics accessories and reinforcements) which is textile materials: _____%;

b. The percentage of external surface area (including any leather accessories and reinforcements) which is leather: _____%; and

c. The percentage by weight of the textile material(s) constituting the external layer which is:

Cotton	_____%
Wool or fine animal hair	_____%
Man-made fibers	_____%
Other (specify:_____)	_____%
	Total 100%

7. If the product is an upper and is of rubber or plastics (that is, the percentage at c. is the largest percentage specified under 1. above), then specify the percentage of external surface area (including all accessories and reinforcements) which is rubber or plastics: _____%.

6406.99: OTHER FOOTWEAR PARTS AND RELATED ITEMS:

1. Specify the percentage by weight of the product which is:

Leather	a._____%
Composition leather	b._____%
Rubber and/or plastics	c._____%
Textile materials	d._____%
Wood	e._____%
Metal	f._____%
Other (specify:_____)	g._____%
	Total 100%

For the above weight breakdown, include as "textile materials" all pieces cut from sheets of textiles laminated to, coated with, or impregnated by rubber or plastics on one side (but not both sides) of the material unless the textile is present merely for reinforcement.

2. If any textile material is present merely in order to reinforce a rubber or plastics material, so state and identify each part or item containing any such textile material.

6406.99: OTHER FOOTWEAR PARTS AND RELATED ITEMS—continued:

3. If the textile materials weight specified at d. under 1. above is over 25 percent, specify the percentage by weight of the textile materials which is:

Cotton	_____%
Wool or fine animal hair	_____%
Man-made fibers	_____%
Other (specify: _____)	_____%
Total	100%

4. If any leather identified at a. under 1. above is coated or laminated with rubber and/or plastics, so state and, if coated:

a. If the coating is less than 0.1 millimeter in thickness, so state; or

b. If the coating is 0.1 millimeter or more in thickness, specify the thickness of the coating to the nearest hundredth of a millimeter.

5. If the product is a leg warmer, so state.

6. State whether or not the product will cover all or most of the foot.

CHAPTER 65
HEADGEAR AND PARTS THEREOF

Heading/ Subheading 6505: HATS AND OTHER HEADGEAR, KNITTED OR CROCHETED, OR MADE UP FROM LACE, FELT OR OTHER TEXTILE FABRIC, IN THE PIECE; HAIR-NETS:

1. Provide a component material breakdown by weight.

2. Describe the construction of the product and state whether or not it contains braid.

CHAPTER 70
GLASS AND GLASSWARE

Heading/ Subheading 7019: GLASS FIBERS (INCLUDING GLASS WOOL) AND ARTICLES THEREOF:

GENERAL REQUIREMENTS:

1. State whether the product is glass fibers (including glass wool) or is an article thereof.

2. If the product consists of glass wool, specify the silica content by weight and, if the silica content is less than 60 percent, specify the alkaline oxide and boric oxide content by weight.

3. If the product is an article, specify the form or commercial designation of the product (for example, thin sheet, web, mat, mattress, board, curtain, drapery).

4. State whether the product is woven or nonwoven.

Heading/ Subheading	
7019.10.10 and 7019.10.20:	YARNS OF GLASS FIBERS: State whether the yarns are colored or not colored.
7019.10.30 through 7019.10.60:	CHOPPED STRANDS, ROVINGS AND SLIVERS OF GLASS FIBERS: Specify whether the product is chopped strands, rovings, or slivers.
7019.20.10 through 7019.20.50:	WOVEN FABRICS OF GLASS FIBERS: 1. Provide the fabric width in centimeters. 2. If of a width not exceeding 30 centimeters, state whether or not the fabric has selvages or false selvages (fast edges) on both sides. 3. State whether the fabric is made up of colored or not colored yarns.

CHAPTER 72
IRON AND STEEL

Heading/ Subheading	
7206 through 7229:	IRON AND NONALLOY STEEL, STAINLESS STEEL AND OTHER ALLOY STEEL, IN PRIMARY FORMS, AND SEMI-FINISHED PRODUCTS AND PRINCIPAL PRODUCTS DERIVED DIRECTLY THEREFROM: 1. Identify the product by name or type (for example, bar, strip, angle, T section, wire, rod). 2. Identify each element in the product in terms of percentage by weight. 3. Describe the process by which the product is made (for example, flat-rolled, cold-rolled, extruded, centered, drawn). 4. Describe any subsequent manufacturing or finishing processes to which the product was subjected (for example, grinding, polishing, turning, perforating, coating, plating, heat treating, embossing, cladding). 5. Provide all measurements of the product in metric units (for example, width, thickness, length, diameter, cross-sectional area). 6. If the product is in coil form, state whether it is in coils of successively superimposed layers or in spirally oscillated coils or in irregularly wound coils, and state whether or not it is wound on a spool or on a reel. 7. For flat-rolled products, indicate the minimum yield point. 8. Indicate any industry standards or specifications to which the product was made, such as ASTM specifications.

CHAPTER 73
ARTICLES OF IRON OR STEEL

Heading/ Subheading

7301 and 7302: SHEET PILING; WELDED ANGLES, SHAPES AND SECTIONS; RAILWAY OR TRAMWAY TRACK CONSTRUCTION MATERIAL:

1. Identify the product by specific name (for example, sheet piling, rails, cross-ties, switch blades, sole plates).
2. Identify each element in the product in terms of percentage by weight.
3. Describe the process by which the product is made (for example, hot-rolled, cold-rolled).
4. Describe any subsequent manufacturing or finishing processes to which the product was subjected (for example, welding two or more pieces together, perforating, heat treating).
5. Indicate any industry standards or specifications to which the product was made, such as ASTM specifications.

7303 through 7307: TUBES, PIPES AND HOLLOW PROFILES; TUBE OR PIPE FITTINGS:

1. Identify the product by name (for example, tubing, line pipe, casing, elbow, flange).
2. Identify each element in the product in terms of percentage by weight.
3. Describe the process by which the product was made (for example, cast, hot-rolled, hot-extruded, cold-drawn, cold-rolled) and, in the case of pipes and tubes, state whether they are welded or seamless.
4. Describe any subsequent manufacturing or finishing processes to which the product was subjected (for example, threading, threading and coupling, coating, machining, drilling).
5. Provide all measurements of the product in metric units (for example, inside diameter, outside diameter, wall thickness).
6. For pipes and tubes, indicate the yield strength.
7. Describe the intended use of the product.
8. Indicate any industry standards or specifications to which the product was made, such as ASTM or API specifications.

7308: STRUCTURES (EXCEPT PREFABRICATED BUILDINGS OF HEADING 9406) AND PARTS OF STRUCTURES:

Identify the type of metal (for example, stainless steel, carbon steel), and state where and how the product is used.

Heading/ Subheading

7312: STRANDED WIRE, ROPES, CABLES, PLAITED BANDS, SLINGS AND THE LIKE, NOT ELECTRICALLY INSULATED:

GENERAL REQUIREMENTS

1. Identify each element in the product in terms of percentage by weight.
2. Indicate any industry standards or specifications to which the product was made, such as ASTM specifications.
3. Describe the construction of the product and provide its dimensions in metric units.
4. Identify all coverings, fittings and attachments, if any.
5. Describe the intended use of the product.

7312.10.1050 and 7312.10.3020: OTHER STRANDED WIRE:

1. Specify the length of the lay or twist.
2. Specify the strand diameter.

7313: BARBED WIRE; TWISTED HOOP OR SINGLE FLAT WIRE, BARBED OR NOT, AND LOOSELY TWISTED DOUBLE WIRE, OF A KIND USED FOR FENCING:

1. State whether the product is made of iron or of steel.
2. Describe the construction of the product and list all its dimensions.
3. Describe the intended use of the product.

7314: CLOTH, GRILL, NETTING AND FENCING; EXPANDED METAL:

1. Identify each element in the product in terms of percentage by weight.
2. Indicate any industry standards or specifications to which the product was made.
3. For all products except expanded metal, describe the construction of the product and provide its dimensions in metric units (including the cross-sectional dimension of the wire and the mesh size of the product).
4. Identify all coverings, coatings and attachments, if any.
5. Describe the intended use of the product.

Heading/ Subheading

7317: NAILS, TACKS, DRAWING PINS, CORRUGATED NAILS, STAPLES AND SIMILAR ARTICLES:

1. Identify each element in the product in terms of percentage by weight.
2. Indicate any industry standards or specifications to which the product was made.
3. Describe the construction of the product and specify its length and diameter in millimeters.
4. State whether or not the product is made of round wire and, if made of another material, identify that other material and describe the manufacturing process.

CHAPTER 84

NUCLEAR REACTORS, BOILERS, MACHINERY AND MECHANICAL APPLIANCES, AND PARTS THEREOF

MACHINE TOOLS, MACHINING CENTERS, UNIT CONSTRUCTION MACHINES, MULTISTATION TRANSFER MACHINES, AND LATHES:

Heading/ Subheading

8456 through 8465: Indicate the specific type of machine (for example, external cylindrical grinder, vertical machining center, horizontal lathe).

8456 through 8462: State whether or not the machine is equipped with a CNC (Computer Numerical Control) or the facings (electrical interface) for a CNC.

8457 through 8463: State whether or not the machine is used or rebuilt.

8456.30.10: ELECTRO-DISCHARGE MACHINES:

State whether or not the machine is a traveling wire (wire cut) type.

8457.10: MACHINING CENTERS:

1. State whether or not the machining center has an ATC (Automatic Tool Changer).
2. If the machining center has an ATC and is a vertical-spindle machine, specify the y-axis travel in millimeters.

Heading/ Subheading 8458.11.0030 through 8458.11.0090: HORIZONTAL SINGLE SPINDLE NUMERICALLY-CONTROLLED LATHES FOR REMOVING METAL:

Specify the continuous rated HP or kW rating of the main spindle motor.

8466.93 and 8466.94: PARTS OF MACHINES OF HEADINGS 8456–8463:

Indicate the specific type of machine of which the product is part.

CHAPTER 85

ELECTRICAL MACHINERY AND EQUIPMENT AND PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE AND SOUND RECORDERS AND REPRODUCERS, AND PARTS AND ACCESSORIES OF SUCH ARTICLES

Heading/ Subheading 8547.90: OTHER INSULATING FITTINGS; ELECTRICAL CONDUIT TUBING AND JOINTS THEREFOR, OF BASE METAL LINED WITH INSULATING MATERIAL:

Identify the material(s) of which the product is made, including any insulating lining material.

CHAPTER 96

MISCELLANEOUS MANUFACTURED ARTICLES

Heading/ Subheading 9612.10: RIBBONS FOR TYPEWRITERS AND SIMILAR MACHINES:

1. Describe the type of ribbon, its specific function, and where and how it is used.
2. State whether or not it is put up in a plastic or metal cartridge.
3. Provide the ribbon width in millimeters.
4. State whether or not the ribbon is woven of man-made fibers.

PART 142 – ENTRY PROCESS

1. The authority citation for Part 142 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. Section 142.6(a)(1) is amended by removing the period at the end and by adding, in its place, the words "as provided for in Part 141 of this chapter."

PART 143 – SPECIAL ENTRY PROCEDURES

1. The authority citation for Part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

2. Section 143.36(C) (3) is amended by removing the words "In appropriate cases" and by adding, in their place, the words "Except in the case of information required under § 141. 89 of this chapter, in appropriate cases".

PART 151 – EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. The authority citation for Part 151 is amended by removing the authority citations for sections 151.62 and 151.82.

2. Sections 151.62 and 151.82 are removed and reserved.

MICHAEL H. LANE,
Acting Commissioner of Customs.

Approved: August 13, 1992.
PETER K. NUNEZ,
Assistant Secretary of the Treasury.

[Published in the Federal Register, September 3, 1992 (57 FR 40361)]

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19 CFR Part 4

VESSEL REPAIR APPLICATIONS FOR RELIEF FROM DUTY

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to increase the monetary jurisdictional authority of the three Customs Regional Vessel Repair Liquidation Units to decide whether to approve or disapprove certain applications for relief from the assessment of duties under the vessel repair statute. The increased authority would be effective only in cases in which specifically applicable Customs Headquarters precedent exists.

DATE: Comments must be received on or before November 3, 1992.

ADDRESS: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Bruce Friedman, Office of Trade Operations, 202–927–0300 (operational matters), or Larry L. Burton, 202–927–0840 (legal matters).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 1466 of title 19, United States Code, provides that a duty of 50 per cent ad valorem shall be assessed upon the value of repairs accomplished outside of the United States on certain American-flag vessels. The statute, as well as numerous judicial and administrative interpretations, provides exceptions to the assessment of duty under specific circumstances.

The statutory mandate is implemented under § 4.14 of the Customs Regulations (19 CFR 4.14), which provides the necessary working guidelines for Customs as well as vessel operators. Among the matters set forth in § 4.14 are the procedures for seeking administrative refund or remission of assessed duty. Necessary evidence is gathered in one of three Vessel Repair Liquidation Units located in the New York Customs Region (New York, New York, for entries filed in the Northeast, New York, and North Central Regions), the South Central Customs Region (New Orleans, Louisiana, for entries filed in the Southeast, South Central, and Southwest Regions), and the Pacific Customs Region (San Francisco, for entries filed in the Pacific Region). Each of these locations is presently empowered to consider and decide initial requests for duty refund or remission (Application for Relief) when there exists clear Customs Headquarters precedent regarding the matter under consideration and when the decision will result in a refund or remission of less than $2,500 in duty (19 CFR 4.14(c)(2)).

Section 4.14 was significantly revised in 1980 by publication in the Federal Register of Treasury Decision 80–237 (45 FR 46560), September 30, 1980. A Customs field jurisdictional amount was first made a part of the Customs Regulations with that publication. At that time, the limit for field determination was set at $2,500 because to set it at a higher suggested limit would "preclude a central review of major issues" by Customs Headquarters. Over the intervening years, the cost of foreign shipyard operations has been significantly inflated. In consideration of this factor, together with the development of necessary Customs expertise outside of Headquarters, Customs believes that it is appropriate that the jurisdictional limitation for determinations in the Regional Vessel Repair Liquidation Units be increased to $50,000 in cases in which there exists clear Customs Headquarters precedent.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)),

on regular business days between the hours or 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW, Washington, D.C.

REGULATORY FLEXIBILITY ACT

Although this document is being issued with notice for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management. Accordingly, this document is not subject to the regulatory analysis or other requirements of 5 U.S.C. 601 *et seq.*

EXECUTIVE ORDER 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

DRAFTING INFORMATION

The principal author of this document was Larry L. Burton, Carrier Rulings Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 4

Customs duties and inspection, Reporting and recordkeeping requirements, Vessels.

PROPOSED AMENDMENT

It is proposed to amend Part 4, Customs Regulations (19 CFR Part 4), as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for Part 4, Customs Regulations (19 CFR Part 4) and the relevant specific authority citation for § 4.14 (19 CFR 4.14) continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3;

* * * * * * *

§ 4.14 also issued under 19 U.S.C. 1466, 1498;

* * * * * * *

2. It is proposed to amend section 4.14(c)(2), Customs Regulations (19 CFR 4.14(c)(2)), by removing both references to "$2,500" where they appear in the paragraph, and adding in their places "$50,000."

MICHAEL H. LANE,
Acting Commissioner of Customs.

Approved: August 26, 1992.

PETER K. NUNEZ,
Assistant Secretary of the Treasury.

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United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

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Decisions of the United States Court of International Trade

(Slip Op. 92–138)

MITSUBISHI ELECTRIC CORP., MITSUBISHI ELECTRONICS AMERICA, INC., MITSUBISHI CONSUMER ELECTRONICS AMERICA, INC., AND ERICSSON GE MOBILE COMMUNICATIONS, INC., PLAINTIFFS *v.* UNITED STATES, DEFENDANT, AND MOTOROLA, INC., DEFENDANT-INTERVENOR

Consolidated Court No. 91–04–00301

(Dated August 21, 1992)

Baker & McKenzie, (*Thomas Peele* and *Steven F. Fabry*) for Plaintiffs Mitsubishi Electric Corporation, Mitsubishi Electronics America, Inc. and Mitsubishi Consumer Electronics America, Inc.

Sharretts, Paley, Carter & Blauvelt, P.C., (*Gail T. Cumins* and *Ned H. Marshak*) for Plaintiff Ericsson GE Mobile Communications, Inc.

Stuart M. Gerson, Assistant Attorney General, *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, United States Department of Justice (*Michael S. Kane*); of counsel: *David Richardson*, Department of Commerce, for Defendant.

Oppenheimer Wolff & Donnelly, (*Timothy A. Harr*) for Defendant-Intervenor.

MEMORANDUM OPINION

CARMAN, *Judge*: Plaintiffs appeal a scope ruling of the United States Department of Commerce ("Commerce"), International Trade Administration ("ITA"), published at *Notice of Scope Rulings*, 56 Fed. Reg. 36,774 (Aug. 1, 1991) and more fully explained in the ITA's April 16, 1991 letter to interested parties. Administrative Record Document ("A.R. Doc.") 16 ("Scope Ruling"). The Scope Ruling held that certain radio frequency ("RF") power semiconductors manufactured by Plaintiff Mitsubishi Electric Corporation ("Mitsubishi") in Japan and imported into the United States are subassemblies of cellular mobile telephones ("CMTs") within the scope of the antidumping duty order in *Antidumping Duty Order: Cellular Mobile Telephones and Subassemblies from Japan*, 50 Fed. Reg. 51,724 (Dec. 19, 1985). A.R. Doc. 16 at 4.

Plaintiffs bring this action pursuant to 19 U.S.C. § 1516a(a)(2)(B)(vi) (1988) to contest the determination reached in the Scope Ruling. The case is before the Court on Plaintiffs' motion under Rule 56.1 of the Rules of this Court for judgment upon the agency record. This Court has jurisdiction pursuant to 28 U.S.C. § 1581(c) (1988).

BACKGROUND

Plaintiffs are Mitsubishi, a Japanese manufacturer and exporter of RF power semiconductors; its two related United States importers, Mitsubishi Electronics America, Inc. and Mitsubishi Consumer Electronics America, Inc.; and an unrelated United States importer, Ericsson GE Mobile Communications, Inc. ("EGE").

The merchandise at issue consists of RF power semiconductors which are thick-film power amplifiers (A.R. Doc. 3 at 5) that operate at various frequency ranges, which are defined in MegaHertz ("MHz"). Plaintiffs' RF power semiconductors operate effectively in the range of 810–860 MHz. A.R. Doc. 11 at 2.

The underlying antidumping duty investigation found that subassemblies of cellular mobile telephones ("CMTs") include power amplifying devices.[1] The Preliminary Determination defined subassemblies covered by the investigation in the following terms:

> Examples of such subassemblies are circuit boards and/or modules containing any of the following circuitry or combinations thereof: audio processing, signal processing (logic), RF, IF, synthesizer, duplexer, power supply, power amplification, transmitter, and exciter.

Id. at 24,554–55.

The definition of subassemblies assumed its present form in the final determination. *See Cellular Mobile Telephones and Subassemblies from Japan; Final Determination of Sales at Less Than Fair Value*, 50 Fed. Reg. 45,447 (Oct. 31, 1985) ("Final Determination"). The Final Determination adopted the findings and reasoning of the Preliminary Determination but, rather than attempt to formulate a technical and descriptive definition of subassemblies, it established a standard based on the dollar value of the subassemblies in question:

> Subassemblies are any completed or partially completed circuit modules, the value of which is equal to or greater than five dollars, and which are dedicated exclusively for use in CMT transceivers or control units. The term "dedicated exclusively for use" only encompasses those subassemblies that are specifically designed for use in CMTs, and could not be used, absent alteration, in a non-CMT device. * * * Examples of subassemblies which may fall within this definition are circuit modules containing any of the following circuitry or combinations thereof: audio processing, signal processing (logic), RF, IF, synthesizer, duplexer, power supply, power amplification, transmitter, and exciter.

Id. at 45,448.

After the International Trade Commission ("ITC") issued its final affirmative injury determination, Commerce published the antidumping

[1] The inclusion of subassemblies in the preliminary antidumping duty investigation resulted from Commerce's determination that a failure to include them would result in an order that "could easily be circumvented." *Cellular Mobile Telephones and Subassemblies from Japan; Preliminary Determination of Sales at Less Than Fair Value*, 50 Fed. Reg. 24,554, 24,555 (June 11, 1985). Commerce also addressed the issue of the inclusion within the scope of the investigation of subassemblies that are imported separately, as opposed to those imported in kits. *Id.*

duty order. *Antidumping Duty Order: Cellular Mobile Telephones and Subassemblies from Japan*, 50 Fed. Reg. 51,724 (Dec. 19, 1985) ("Order").

The Final Determination was then challenged on the ground, *inter alia*, of whether or not the ITA's determination to include discrete CMT subassemblies within the scope of the investigation was supported by substantial evidence on the record and otherwise in accordance with law. *See Mitsubishi Elec. Corp. v. United States*, 12 CIT 1025, 1041, 700 F. Supp. 538, 551 (1988), *aff'd*, 8 Fed. Cir. (T) ___, 898 F.2d 1577 (1990). The challenge focused on the inclusion of insignificant, discrete subassemblies (*i.e.*, subassemblies that are imported separately rather than in kits) within the scope of the Order. The Court of International Trade upheld the ITA's determination that discrete subassemblies are within the scope of the Order and the Court of Appeals for the Federal Circuit affirmed.

In December 1989 Motorola, Inc. ("Motorola"), Defendant-Intervenor in this action and petitioner in the underlying administrative action, requested that Commerce conduct an administrative review of the Order for the period December 1, 1988 through November 30, 1989. A.R. Doc. 1 at 2. In its request for the review, Motorola alleged that Mitsubishi and its subsidiaries were importing CMT subassembly "kits" in violation of the Order. *Id.*

Commerce initiated the administrative review and sent questionnaires to Mitsubishi. In its response to Commerce's questionnaires, Mitsubishi claimed that it made no sales or shipments of any merchandise that is subject to the Order during the review period. *Id.* Mitsubishi's response included a list of items that it and its related entities had imported for use in the manufacture of CMTs. *Id.* at 4. The list included RF power semiconductors, the merchandise at issue in this action. Several exchanges of questionnaires and responses concerning the RF power semiconductors followed. A.R. Doc. 4 (Letter from ITA to Mitsubishi); A.R. Doc. 5 (Letter from Mitsubishi to ITA); A.R. Doc. 6 (Letter from Mitsubishi to ITA); A.R. Doc. 7 (Letter from Mitsubishi to ITA). Commerce then decided to self-initiate a scope inquiry, pursuant to 19 C.F.R. § 353.29(a) (1990) to determine whether or not the BE power semiconductors are subject to the Order. A.R. Doc. 8 (Letter from ITA).

The scope inquiry focused on two issues: 1) whether or not power semiconductors are subassemblies within the meaning of the Order; and 2) whether or not the RF power semiconductors in question are "dedicated exclusively for use in CMTs." In the course of the inquiry, Mitsubishi asserted that its RF power semiconductors are not subject to the Order because the Order applies to subassemblies only to the extent that they cannot be used, absent alteration, in the manufacturing of non-CMT devices. A.R. Doc. 11 at 9, 11 (Letter from Mitsubishi to ITA); A.R. Doc. 7 (Letter from Mitsubishi to ITA). Plaintiffs presented evidence to show that their RF power semiconductors are used in the manufacture of non-CMT devices in foreign countries which are sold

and used in the United States. *Id.* at 8; A.R. Doc. 19 at 3 (Letter from Mitsubishi to ITA). Plaintiffs also asserted that the RF power semiconductors are not subassemblies because they do not conform to the definitions of subassemblies contained in the Order and in various technical reference materials. A.R. Doc. 11 (Letter from Mitsubishi to ITA); A.R. Doc 10 at 8 (Letter from EGE to ITA); *see* A.R. Doc. 9 (Letter from NEC Corp. and NEC America to ITA). On April 16, 1991, Commerce issued the Scope Ruling which held that the RF power semiconductors in question do fall within the scope of the Order. *Notice of Scope Rulings*, 56 Fed. Reg. 36,774 (Aug. 1, 1991); A.R. Doc. 16.

On April 23, 1991, Plaintiffs commenced the present action contesting that Scope Ruling. Specifically, Plaintiffs contest two issues. First, they argue that Commerce's scope Ruling is unsupported by substantial evidence and not in accordance with law because the ITA disregarded evidence of actual and potential uses of the RF power semiconductors in non-CMT devices and unlawfully expanded the scope of the criteria as set forth in the Order. Second, Plaintiffs argue that Commerce's finding that the RF power semiconductors at issue here are circuit module subassemblies, notwithstanding the fact that the RF power semiconductors are complete and unitary devices not capable of disassembly or repair in the field, is unsupported by substantial evidence and not in accordance with law.

Standard of Review

In actions challenging a determination as to whether a particular type of merchandise is covered in an existing antidumping duty order, 19 U.S.C. § 1516a(a)(2)(B)(vi), this Court must decide whether the challenged determination is supported by substantial evidence on the record and otherwise in accordance with law. 19 U.S.C. § 1516a(b)(1)(B) (1988). The United States Supreme Court has explained that "[s]ubstantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938); *accord Matsushita Elec. Indus. Co. v. United States*, 3 Fed. Cir. (T) 44, 51, 750 F.2d 927, 933 (1984); *J.C. Hallman Mfg. Co. v. United States*, 13 CIT 1073, 1075, 728 F. Supp. 751, 753 (1989).

Discussion

A. *Whether the Scope Ruling Unlawfully Expands the Antidumping Duty Order:*

The first issue before the Court is whether the Scope Ruling is an unlawful expansion of the Order or merely a lawful clarification of its terms.

It is well established, and undisputed here, that the ITA has the authority to clarify the scope of its antidumping duty orders. *See Diversified Products Corp. v. United States*, 6 CIT 155, 159, 572 F. Supp. 883, 887 (1983). Commerce, however, may not expand the scope of such orders beyond the merchandise encompassed by the final less than fair

value determinations. *See, e.g., Royal Business Machines, Inc. v. United States*, 1 CIT 80, 86–87, 507 F. Supp. 1007, 1013–14 (1980), *aff'd*, 69 CCPA 61, 669 F.2d 692 (1982). This rule was recently followed by the circuit court in *Smith Corona Corp. v. United States*, 8 Fed. Cir. (T) ____, ____, 915 F.2d 683, 686 (1990), where the court stated that "[a]lthough the scope of a final order may be clarified, it cannot be changed in a way contrary to its terms." The Court in *UST, Inc. v. United States*, 9 CIT 352, 356 (1985), reiterated this rule in stating that "while Commerce may interpret [sic] the scope of a finding, it cannot alter or amend that scope. Each stage of the statutory proceeding maintains the scope passed on from the previous stage."

The terms of the Order establish three criteria to define subassemblies within its scope. They are:

> (1) completed or partially completed circuit modules,
> (2) the value of which is equal to or greater than five dollars, and
> (3) which are dedicated exclusively for use in CMT transceivers or control units.

Order, 50 Fed. Reg. at 51,725. The third criterion is defined as encompassing only "those subassemblies that are specifically designed for use in CMTs, and could not be used, absent alteration, in a non-CMT device." *Id.*

The challenged Scope Ruling, however, applies the Order to "imported subassemblies *used solely for CMT production in the United States*." Scope Ruling, A.R. Doc. 16 at 4 (emphasis added). The ITA included the subject merchandise within the scope of the Order on the ground, *inter alia*, that they "continue to be used in the United States exclusively in CMTs and are designed for the specified frequencies reserved by the Federal Communications Commission for cellular telephone applications." *Id.*

At the center of this controversy are the conflicting interpretations that each of the parties gives to the "dedicated exclusively for use in CMT transceivers or control units" criterion established by the Order. The conflict between the Plaintiffs' and Defendant's interpretations of the "dedicated exclusively for use" standard amounts to the differences between (i) the requirement that RF power semiconductors have potential non-CMT uses (Plaintiffs' position), and (ii) the requirement that RF power semiconductors actually be used in the production of non-CMT devices in the United States (Defendant's position).

Plaintiffs claim that the evidence in the record demonstrates that the RF power semiconductor at issue in this case does not meet the "dedicated exclusively for use" standard. Therefore, Plaintiffs maintain that the merchandise does not fall within the scope of the Order.

Defendant contends that the Scope Ruling did nothing more than "clarify the test in order to eliminate an interpretation that would nullify those portions of the Order and Final Determination relating to subassemblies." Def. Brief at 19. Defendants argue that the "dedicated exclusively for use" standard is applicable to RF power semiconductors

on the ground that "[t]here is no evidence in the administrative record that a Mitsubishi power * * * [semiconductor] imported into the United States has ever been incorporated into a non-CMT device." *Id.* at 18.

Specifically, Plaintiffs argue that the "dedicated exclusively for use" standard only encompasses subassemblies that "could" not be used, absent alteration, in a non-CMT device; therefore it follows that the existence of potential non-CMT uses for a particular subassembly would exclude it from the scope of the Order. Plaintiffs contend that the Scope Ruling defines the Order as encompassing subassemblies that have no actual non-CMT use. In other words, the language of the Scope Ruling creates an "is actually used in non-CMT devices" criterion, whereas the Order contains a "could be used in non-CMT devices" criterion. As a result, Plaintiffs contend, the Scope Ruling expands the Order to include subassemblies that have only actual non-CMT uses. Moreover, according to Plaintiffs, Commerce had to make no less than three substantive a additions to the actual scope definition found in the CMTs Order to evade the correct result and force the result it wanted to reach. This, Plaintiffs allege, led to an impermissible expansion of the scope of the Order, contrary to law.

Plaintiffs argue that the evidence they presented in the course of the scope inquiry establishes the existence of both potential and actual non-CMT uses of the RF power semiconductor.[2]

The non-CMT uses include incorporation into land-mobile telephones that are manufactured in a foreign country and subsequently imported into, sold, and used in the United States. Therefore, Plaintiffs

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[2] Plaintiffs evidence includes:

(1) Sample of non-CMT device (land-mobile telephone) sold and used in the United States, which incorporates the subject RF power semiconductor without alteration at non-CMT frequencies. Conf. Doc.

(2) Correspondence between Mitsubishi and a customer concerning the customer's inquiry whether the subject RF power semiconductor could be used in U.S. land-mobile telephones operating at non-CMT frequencies. A.R. Doc. 11, Conf. Doc. 6; Exh. 3.

(3) Internal Mitsubishi engineering test report confirming that the RF power semiconductor could be used in U.S. land-mobile telephones operating at non-CMT frequencies. A.R. Doc. 11, Conf. Doc. 6; Exh. 3.

(4) Customer specifications for the RF power semiconductor for use in a non-CMT device (land-mobile telephone) sold and used in the United States, stating that the RF power semiconductors are to be used in land-mobile telephones in the United States and will operate at non-CMT frequencies. A.R. Doc. 11, Conf. Doc. 6; Exh. 1.

(5) United States Federal Communications Commission grant of authorization for a non-broadcaster transmitter sold and used in the United States, dated September 12, 1988. A.R. Doc. 7, Conf. Doc. 5, Attachment.

(6) Copy of some of the U.S. advertising materials for the non-CMT device sold and used in the United States. A.R. Doc. 7, Conf. Doc. 5, Attachment.

(7) Sample of invoice from Mitsubishi's customer to U.S. sales company for a sale of the non-CMT device sold and used in the United States. A.R. Doc. 7 at 8, Conf. Doc. 5.

(8) Mitsubishi's computerized confirmation list, showing sales of its RF power semiconductors to distributor that sells the semiconductors to the manufacturer of the non-CMT devices sold and used in the United States, with purchase order sheets showing distributor's sales to the manufacturer of the non-CMT device. A.R. Doc. 6, Conf. Doc. 4, Attachment.

(9) Customer specifications for the RF power semiconductor for use in the a non-CMT device (multi-channel access equipment) used outside the United States. A.R. Doc. 11, Conf. Doc. 6, Exh. 1.

(10) Order received by Mitsubishi from customer, showing that the RF power semiconductors ordered will be used in multi-channel access equipment at an airport outside the United States. A.R. Doc. 6, Conf. Doc. 4, Attachment (last page).

(11) Mitsubishi catalog data chart showing that the RF power semiconductors operate effectively at frequencies outside those reserved for CMTs in the United States. A.R. Doc. 11, Conf. Doc. 6, Exhibit 2.

(12) Certified statement under 19 C.F.R. § 353.31(i) that the RF power semiconductors operate effectively at frequencies outside those reserved for CMTs in the United States. A.R. Doc. 11, Conf. Doc. 6.

(13) Certified statement under 19 C.F.R. § 353.31(i) that the RF power semiconductors can be used and have been used, absent alteration, in non-CMT devices. A.R. Doc. 3, Conf. Doc. 2 at 5; A.R. Doc. 5, Conf. Doc. 3 at 2.

Continued

argue, the RF power semiconductors are not dedicated exclusively for use in CMTs as that standard is defined by the Order.

The Court notes that in the course of oral argument Defendant conceded that "[t]he standard that was articulated in the original order [and] the standard that Commerce adheres to * * * is potential use." Transcript of Hearing 45, 47. Defendant maintains, however, that the absence of evidence showing "use in the United States gives a very strong inference that there is no potential use in a non-CMT device." *Id.* at 47.

The Order states that "[the presumption is that CMT subassemblies are covered by the order unless an importer can prove otherwise." *Order*, 50 Fed. Reg. at 51,725. The Court finds that the evidence presented by Plaintiffs was ample to establish that Plaintiffs' RF power semiconductors have both potential and actual non-CMT uses. Therefore the Court finds that Commerce's determination, that RF power semiconductors are within the scope of the Order because they are "dedicated exclusively or use" in CMTs, as that standard is defined by the Order, is not supported by substantial evidence on the record.

The Court also finds that the Scope Ruling expands the scope of the Order and that this expansion is not in accordance with law. In making this finding, the Court notes that Commerce has taken the position that "CMT subassemblies that are 'dedicated exclusively for use' in CMTs are the same 'class or kind' of merchandise as complete CMTs." *Final Determination*, 50 Fed. Reg. at 45,448. Furthermore, in reviewing the various notices and determinations published by Commerce in the context of this investigation, the Court notes some ambiguity as to whether subassemblies such as those at issue here are within the scope of the Order. Specifically, Commerce has said that "[w]hile some CMT components may be purchased by CMT manufacturers from unrelated parties, the Department has reason to believe that such separately traded items may not meet the 'dedicated exclusively for use' criteria, and therefore would not be covered by the scope of any order." *Id.* Because EGE is not related to Mitsubishi or its affiliated distributors in this country and because it is involved in the purchase of separately traded items as opposed to kits containing several CMT subassemblies, the observation quoted above would appear to apply to the RF power semiconductors at issue here.

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(14) Sworn statement of Manager of Product Development for Cellular Products for EGE that the RF power semiconductors could be used, absent alteration, in the following non-CMT devices:

(a) NPSPAC public service radios and equipment utilizing frequencies outside those reserved for CMTs in the United States;

(b) SMR mobile radios (*i.e.* land-mobile telephones that utilize frequencies outside those reserved for CMTs in the United States; and

(c) SMR station equipment that utilizes frequencies outside those reserved for CMTs in the United States, with back-up engineering test attached. A.R. Doc. 10, Attachment.

(15) Certified statement of EGE under 19 C.F.R. § 353.31(i) that the RF power semiconductor can be used without modification for non-cellular as well as cellular application. A.R. Doc. 10.

Following the Court's findings above, with respect to the applicability of the "dedicated exclusively for use" standard to RF power semiconductors and the ambiguity with regards to the application of the Order to subassemblies that are separately traded between unrelated parties, the Court does not find substantial evidence on the record to support the proposition that this product is of the "same class or kind of merchandise that was included within the scope of the Order.

Plaintiffs further contend that the application of the Order to "imported subassemblies used solely for CMT production in the United States" (Scope Ruling, A.R. Doc. 16 at 4) further expands the Order in two respects. First, it imposes the requirement that non-CMT uses of RF power semiconductors must occur in the United States. Second, it requires that such use must include the production of non-CMT devices.

Despite the alleged unlawful nature of this expansion, Plaintiffs argue that the evidence in the record establishes that non-CMT devices that incorporate Plaintiff's RF power semiconductors are commercially available in the United States. On this ground alone, Plaintiffs argue that "it is absolutely clear that these items were proven to be not dedicated exclusively for use in CMTs." Pl. Reply at 8. To avoid reaching this conclusion, Plaintiffs argue that Commerce created yet another requirement, that non-CMT uses must include the production of non-CMT devices in the United States. By imposing this additional requirement, Plaintiffs maintain that Commerce has no trouble concluding that the non-CMT devices actually using the semiconductors (land mobile telephones) do not establish an alternative non-CMT use because they are manufactured in a third country and subsequently imported into the United States. *See* A.R. Doc. 16 at 2, 4.

Furthermore, Plaintiffs argue that Commerce did not inquire in the questionnaires that it sent to Mitsubishi in the course of the scope inquiry whether or not RF power semiconductors are used in the manufacture of non-CMT devices in the United States. Transcript of Hearing 31–32. Relying on its understanding of the plain language of the Order, Mitsubishi provided what it considered to be substantial evidence to show that its product was not within the scope of the Order. *Id.* at 33.

Defendant argues that Commerce acted within its authority to clarify the scope of an antidumping duty determination and supports its position that these requirements are implicit in the Order because "a determination under the antidumping statute is designed to provide relief to domestic industry in the *United States*, from the effects of goods dumped in the *United States*." Def. Mem. at 28–29 (emphasis in original).

The Court finds nothing in the language of the Order that requires importers to show use of CMT subassemblies in the production of non-CMT devices in the United States. This result cannot therefore be sustained as a mere clarification of the Order. Therefore the Court finds that the imposition of the requirement that RF power semiconductors must be used in the production of non-CMT devices in the United States

expands the scope of the Order and is not supported by substantial evidence on the record and is not in accordance with law.

B. *Whether Plaintiff Mitsubishi's RF Power Semiconductors Are Subassemblies Within the Meaning of the Antidumping Duty Order:*

Plaintiffs also challenge the Scope Ruling on the ground that their RF power semiconductors are not "subassemblies' within the meaning of the Order. To support this argument, Plaintiffs assert that RF power semiconductors do not conform to the first of the three criteria established in the Order to define subassemblies within its scope, because they are not completed or partially completed circuit module subassemblies. Plaintiffs assert instead that "[a]n RF power semiconductor is an item that may be subassembled to a circuit board, but this does not make it a "subassembly"; it makes the populated or semipopulated circuit board to which it is attached a subassembly." Pl. Mem. at 32–33; *see* A.R. Doc. 10, Attachment (Sworn Statement of Manager of Product Development for Cellular Products for EGE).

Defendant argues that RF power semiconductors are within the scope of the Order "because they performed and compartmentalized 'one or more of the essential functions necessary to a CMT' – *i.e.*, 'the power amplifying function' specifically identified by the Commission." Def. Mem. at 17.

In its determination, Commerce asserts that "[i]n this case, the description of the product contained in the initial investigation and the determinations of the Secretary and Commission were dispositive." A.R. Doc. 16 at 2. In the same paragraph, Commerce cites 19 C.F.R. § 353.29(i) as the provision in the regulations that were followed in this investigation. That provision lists additional factors or consideration, that should be applied in cases in which the description of the product and the determinations of the Secretary and the Commission are not dispositive. They include:

> (i) The physical characteristics of the product;
> (ii) The expectations of the ultimate purchasers;
> (iii) The ultimate use of the product; and
> (iv) The channels of trade.

In light of the Court's finding above, that RF power amplifiers do not meet the "dedicated exclusively for use" standard and may not therefore conform to the description of the product contained in the Order, the Court notes that consideration of these additional technical factors would help shed more light on the extent to which RF power semiconductors are subassemblies within the meaning of the Order.

Without commenting on the extent to which RF power semiconductors are subassemblies in the technical sense in which that term is used, the Court finds that RF power semiconductors are not subassemblies within the scope of the Order because they do not conform to the third criterion established by the Order, in that they are not "dedicated exclusively for use" in CMTs.

C. *Factors Which Commerce Considered in the Course of the Investigation:*

The Court notes that Defendant, in the course of oral argument, raised concern regarding possible circumvention of the Order. Specifically, Defendant stated that "evidence of what happens to subassemblies in a third country does not tell us whether or not subassemblies imported in the United States are being used to circumvent a relief order with resect to CMTs." Transcript of Hearing 58–59. Plaintiffs also address the possibility of circumvention proceedings, asserting that "if Commerce has a real concern that protection for the U.S. industry might be inadequate, Commerce can institute an anti-circumvention investigation under 19 U.S.C. § 1677j(a)." Pl. Reply at 17.

Although this issue has not been squarely placed before the Court, the Court notes that the Trade Act of 1988 promulgated law to address the specific purpose of preventing circumvention of antidumping and countervailing duty orders.[3]

The Court notes that if Commerce is concerned about the possibility of circumvention, the appropriate method to resolve such concern would appear to be proceedings under the provisions specifically designed to prevent circumvention. Without commenting on the adequacy of the investigation carried out by Commerce, the Court notes that in future proceedings in this context, attention to the considerations that Congress has deemed relevant in the context of circumvention proceedings will better achieve the intent of Congress and might help to shed more light on the nature of the transactions.

CONCLUSION

For the foregoing reasons, the Court finds that Commerce's determination, that RF power semiconductors are within the scope of the Order, is not supported by substantial evidence on the record and is not in accordance with law.

The Court also finds that the Scope Ruling expands the scope of the Order and that this expansion is not in accordance with law.

Therefore, this Court reverses the Determination of the ITA and awards judgment for Plaintiffs. The Scope Ruling is set aside.

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[3] That section lists the following factors for consideration in the course of investigations of possible circumvention:

(A) the pattern of trade,

(B) whether the manufacturer or exporter of the parts or components is related to the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order or finding * * * applies, and

(C) whether imports into the United States of the parts or components produced in such foreign country have increased after the issuance of such order or finding.

19 U.S.C. § 1677j(a)(2) (1988).

(Slip Op. 92–139)

KOYO SEIKO CO., LTD. AND KOYO CORP. OF U.S.A., PLAINTIFFS *v.* UNITED STATES, U.S. DEPARTMENT OF COMMERCE, DEFENDANTS, AND TIMKEN CO., DEFENDANT-INTERVENOR

Court No. 90–06–00300

The Timken Company ("Timken") moves, pursuant to Rule 59 of the Rules of this Court, for rehearing of *Koyo Seiko Co. v. United States*, 16 CIT ____, Slip Op. 92–72 (May 15, 1992). Timken also moves for leave to amend its cost of production allegations consistent with Rule 15(a) or Rule 15(b) of the Rules of this Court.

Held: Timken's motion for rehearing is denied as this Court's earlier decision was neither "significantly flawed" nor "manifestly erroneous." Alternatively, Timken's motion to amend its allegations is denied since Timken has unduly delayed its request. Timken, however, may supplement its allegation of below-cost-of-production sales with information not derived from Commerce's investigation of below cost of production sales within ten days of the date this opinion is entered. Commerce is ordered to submit remand results of this case to this Court within twenty days of the date this opinion is entered.

[Timken's motion is denied.]

(Dated August 21, 1992)

Powell, Goldstein, Frazer & Murphy (*Peter O. Suchman, Susan P. Strommer, Jonathan A. Knee, Susan E. Silver, Neil R. Ellis, T. George Davis* and *Niall Meagher*) for plaintiffs.

Stuart M. Gerson, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (*Velta A. Melnbrencis*); of counsel: *Joan L. MacKenzie*, Attorney-Advisor, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, for defendants.

Stewart and Stewart (*Eugene L. Stewart, Terence P. Stewart, James R. Cannon, Jr., John M. Breen* and Margaret E.O. Edozien) for defendant-intervenor.

OPINION AND ORDER

TSOUCALAS, *Judge*: The Timken Company ("Timken") moves for a rehearing of *Koyo Seiko Co. v. United States*, for which this Court issued an opinion and judgment, 16 CIT ____, Slip Op. 92–72, on May 15, 1992. Specifically, Timken moves for reconsideration of this Court's order that in recalculating the dumping margins for the entries from April 1, 1978 to March 31, 1979, Commerce must do so without reference to the investigation of below-cost-of-production sales.

Timken first alleged that Koyo's home market sales were below the cost of production on September 19, 1983. Administrative Record ("AR") (Pub.) Doc. 194. Ten days later, the Department of Commerce, International Trade Administration ("Commerce"), commenced a below-cost investigation for Koyo's 1978–79 sales and sent Koyo a questionnaire requesting detailed cost data. AR (Pub.) Doc. 198. Koyo objected to the initiation of the below-cost investigation on the grounds that Timken had failed to provide reasonable grounds to suspect there were sales below cost and that a below-cost investigation at that point would be a redundant and unfairly burdensome exercise that would unduly delay the already overdue preliminary determination. Koyo sent a letter to Commerce after this Court issued its decision in *Al Tech Spe-*

cialty Steel Corp. v. United States, 6 CIT 245, 575 F. Supp. 1277 (1983), *aff'd*, 745 F.2d 632 (Fed. Cir. 1984),[1] and it referred specifically to standard as articulated in *Al Tech*. Despite Koyo's concerns, however, Commerce did not discontinue the below-cost investigation. In its final results, Commerce again disagreed with Koyo and deemed Timken's cost allegations sufficient. *See Tapered Roller Bearings Four Inches or Less in Outside Diameter From Japan; Final Results of Antidumping Duty Administrative Review*, 55 Fed. Reg. 22,369, 22,376 (Comment 32) (1990).

Before this Court, Koyo again raised the issues that Timken's below-cost allegations were factually insufficient and untimely. In its response, the government agreed with Koyo that the below-cost investigation should not have been initiated and consented to a remand for recalculation of the entries in question without reference to the below-cost-of-production sales. In its reply memorandum, however, Timken requested the Court to take note of certain evidence of record and deny the government's request for a remand.

In the alternative, Timken requested the opportunity to add new evidence on remand. The Court did not grant these requests, but rather ordered a remand to Commerce to recalculate the dumping margins from April 1, 1978 to March 31, 1979 "without reference to the investigation of below-cost-of-production sales." *Koyo Seiko*, 16 CIT at ____, Slip Op. 92–72 at 17. On August 12, 1992, this Court granted defendant's consent motion for an extension of time to August 28, 1992 to file its remand results.

Timken now moves for a rehearing of the cost of production issue or alternatively for leave to amend its cost of production allegations.

DISCUSSION

It is within the sound discretion of the Court to grant or deny a party's motion for rehearing. *See Reynolds Trading Corp. v. United States*, 496 F.2d 1228, 1230 (1974); *Channel Master, Div. of Avnet, Inc. v. United States*, 11 CIT 876, 877, 674 F. Supp. 872, 873 (1987), *aff'd*, 856 F.2d 177 (Fed. Cir. 1988); *Oak Laminates Div. of Oak Materials Group v. United States*, 8 CIT 300, 302, 601 F. Supp. 1031, 1033 (1984), *aff'd*, 783 F.2d 195 (Fed. Cir. 1986). Pursuant to Rule 59(a)(2) of the Rules of this Court, it is incumbent upon the Court to consider whether the movant is entitled to a rehearing under the principles of equity. *See* USCIT R. 59(a)(2)[2]; *see also St. Regis Paper Co. v. United States*, 13 CIT 992, 993 (1989).

A rehearing "is a method of rectifying a significant flaw in the conduct of the original proceeding." *V.G. Nahrgang Co. v. United States*, 6 CIT

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[1] In *Al Tech*, the Court held that there must be "a particularized and objective basis for suspecting" that a particular foreign firm is engaged in home market sales at prices below its cost of production. 6 CIT at 247, 575 F. Supp. at 1280.

[2] Rule 59(a)2 of the Rules of this Court states in pertinent part:

> A new trial or rehearing may be granted to all or any of the parties and on all or part of the issues * * * (2) in an action tried without a jury *or in an action finally determined*, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. [Emphasis in original.]

210, 211 (1983) (citing *W.J. Byrnes & Co. v. United States*, 68 Cust. Ct. 358 (1972)). Furthermore, in ruling on a petition for rehearing, a court's previous decision will not be disturbed unless it is "manifestly erroneous." *United States v. Gold Mountain Coffee, Ltd.*, 9 CIT 77, 78, 601 F. Supp. 212, 214 (1985).

A rehearing may be proper when there has been

> some error or irregularity in the trial, a serious evidentiary flaw, a discovery of important new evidence which was not available, even to the diligent party, at the time of trial, or an occurrence at trial in the nature of an accident or unpredictable surprise or unavoidable mistake which severely impaired a party's ability to adequately present its case:

W.J. Byrnes, 68 Cust. Ct. at 358.

In this action, Timken has failed to demonstrate any of the grounds which would justify the granting of its motion for rehearing on the cost of production issue. Timken argues that the Court ignored evidence of record. However, it fails to show that the Court's previous decision was "erroneous." Timken specifically called the Court's attention, in its memoranda in this case, to the only evidence of record. This Court already has reviewed this evidence prior to deciding this case and was not convinced by Timken's arguments.

Timken argues that the Court retroactively applied *Al Tech* to this case. *See* Timken's *Memorandum in Support of Motion for Rehearing and Motion for Leave to Amend Cost of Production Allegations* at 7. This allegation is futile because *Al Tech* merely clarifies a general evidentiary standard for reviewing below-cost allegations, rather than establishing a new methodology for Commerce to apply. *See Al Tech*, 6 CIT 245, 575 F. Supp. 1277.

Pursuant to 19 U.S.C. § 1677b(b) (1988 and 1992 Supp.), the ITA shall investigate a foreign manufacturer's cost of production "[w]henever [it] has reasonable grounds to believe or suspect that sales in the home market * * * have been made at prices which represent less than the cost of producing the merchandise in question * * *." The phrase "reasonable grounds to believe or suspect" is not self defining. The court in *Connors Steel Co. v. United States*, 2 CIT 242, 527 F. Supp. 350 (1981), clarified this standard as a general evidentiary threshold amounting to "less than the probable cause needed to secure a search warrant." *Id.* at 248, 527 F. Supp. at 357. *Al Tech* merely provides guidance in requiring "a *particularized* and *objective* basis for suspecting" that a particular foreign firm is engaged in home market sales at prices below its cost of production. *Al Tech*, 6 CIT at 247, 575 F. Supp. at 1280 (emphasis supplied). A new methodology was not created.

Moreover, Koyo Seiko Co. and the Department of Commerce consented that this case should be remanded for recalculation of dumping margins for the period April 1, 1978 to March 31, 1979 without reference to the investigation of below-cost-of-production sales. Therefore, for the foregoing reasons, Timken's motion for rehearing is denied.

Motion to Amend Pleadings Under Rules 15(a) or 15(b):

Alternatively, Timken requests that this Court, pursuant to Rules 15(a) or 15(b) of the Rules of this Court, permit it to amend or supplement its 1983 below-cost allegations against Koyo during the remand of this case. Koyo Seiko, however, claims that this would prejudice them as they would not be able to fairly defend themselves due to the lengthy passage of time.

The Supreme Court, in *Foman v. Davis*, held that under Rule 15(a)[3], the requirement that leave to amend pleadings must be freely given, must be balanced against numerous considerations protecting the rights of the opposing party. *Foman v. Davis*, 371 U.S. 178, 182 (1962). The Court must consider whether there was "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc." *See id.; see also Saint Paul Fire & Marine Ins. Co. v. United States*, 16 CIT ____, ____, Slip Op. 92–119 at 5 (July 27, 1992); *The Timken Co. v. United States*, 15 CIT ____, ____, 779 F. Supp. 1402, 1403–04 (1991).

The United States Court of Appeals for the Federal Circuit recently stated that "[a]lthough delay itself is an insufficient ground to deny amendment, if the delay is 'undue' the district court may refuse to permit amendment." *Datascope v. SMEC, Inc.*, 962 F.2d 1043, 1045 (Fed. Cir. 1992). The Court of Appeals has also stated that a "litigant's failure to assert a claim as soon as he could have is properly a factor to be considered in deciding whether to grant leave to amend." *Tenneco Resins, Inc. v. Reeves Bros., Inc.*, 752 F.2d 630, 634 (Fed. Cir. 1985)(citing *Carson v. Polley*, 689 F.2d 562, 584 (5th Cir. 1982)); *see also Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 327 n.1 (1971); *Saint Paul*, Slip Op. 92–119 at 6.

This request by Timken to amend its original below-cost allegations takes place thirteen years after the last entry in this case. Timken had ample opportunity to introduce new evidence and failure to do so was at its peril.

It is prejudicial to require a party to defend allegations made several years later, particularly since the moving party had every opportunity to seek amendments to its allegations at an earlier time. A trial court also "may properly consider the possibility of prejudice to a party stemming from the burden of additional discovery after a long delay." *Tenneco*, 752 F.2d at 634 (citing *Troxel Mfg. Co. v. Schwinn Bicycle Co.*, 489 F.2d 968, 971 (6th Cir. 1973), *cert. denied*, 416 U.S. 939 (1974)). This delay would cause unfair prejudice to Koyo Seiko as Timken's new allegations would be an unfair surprise to the defending party. Therefore, plaintiff's motion to amend its allegations under Rule 15(a) is denied.

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[3] Rule 15(a) of the Rules of this Court states in pertinent part:

> [A] party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

Similarly, Timken moves under Rule 15(b) of the Rules of this Court. Rule 15(b) permits amendments to conform to the evidence when:

> [(1)] issues not raised by the pleadings are tried by express or implied consent of the parties * * * [or (2) when] the evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings * * * [but] the presentation of the merits of the action,will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits.

USCIT R. 15(b). Timken fails to satisfy either of these conditions. Furthermore, any amendments at this point in time would be unduly prejudicial to the defending party as discussed above.

Supplemental Information

At the same time, however, during the administrative proceeding, Commerce was satisfied with Timken's allegation of below-cost-of-production sales despite the *Al Tech* decision and never indicated to Timken that the allegation was in any way unsatisfactory. In fact, the record indicates that Commerce found Timken's allegation satisfactory despite Koyo's objections. The first time that Timken was advised of Commerce's dissatisfaction with Timken's allegation was when the government filed its memorandum in partial opposition to Koyo's motion for judgment upon the administrative record. Thus, Timken never had any reason to supplement the allegation. The government's 1992 request for a remand for recalculation of the dumping margin without reference to the cost of production investigation was in the nature of an unpredictable surprise which impaired Timken's ability to adequately present its case with respect to the alleged below-cost-of-production sales.

For the foregoing reasons and in the interests of justice, Slip Op. 92–72 and the accompanying judgment should be modified to permit Timken, within ten days of the date this opinion is entered, to supplement its allegation of below-cost-of-production sales with information not derived from Commerce's investigation of below-cost-of-production sales and to permit Commerce to consider the supplemental information, in order to determine whether the dumping margins for the April 1, 1978 to March 31, 1979 period should be recalculated without reference to the investigation of below-cost-of-production sales.

Conclusion

Timken's motion for rehearing is denied as this Court's earlier decision was neither "significantly flawed" nor "manifestly erroneous." Furthermore, Timken's request to amend its 1983 allegations on remand is also denied since its request has been unduly delayed, and Koyo Seiko would otherwise be prejudiced in its ability to defend its case. Tim-

ken, however, within ten days from the date this opinion is entered, may supplement its allegation of below-cost-of-production sales with information not derived from Commerce's investigation of below-cost-of-production sales. Subsequently, Commerce is ordered to submit remand results to this Court within twenty days of the date of this order.

(Slip Op. 92–140)

NSK LTD. AND NSK CORP., PLAINTIFFS *v.* UNITED STATES, DEFENDANT, AND TORRINGTON CO. AND FEDERAL-MOGUL CORP., DEFENDANT-INTERVENORS

Court No. 91–08–00578

Plaintiffs move pursuant to Rule 56.1 of the Rules of this Court for partial judgment on the agency record alleging that the Department of Commerce, International Trade Administration's ("ITA") refusal to correct an alleged clerical error made by plaintiffs was unsupported by substantial evidence on the record and not in accordance with law. Plaintiffs request the Court to remand this issue back to the ITA for the correction of the clerical error, or in the alternative, for the ITA to choose alternative information for use as "best information available" ("BIA") to substitute for the alleged clerical error.

Held: The ITA's decision not to correct plaintiffs' alleged clerical error was supported by substantial evidence on the record and was in accordance with law. The use of BIA in this situation was not warranted.

[Plaintiffs' motion for judgment on the agency record denied.]

(Dated August 24, 1992)

Coudert Brothers (*Robert A. Lipstein, Matthew P. Jaffe* and *Nathan V. Holt*) for plaintiffs.

Stuart M. Gerson, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (*Velta A. Melnbrencis*); of counsel: *Stephen J. Claeys*, Attorney-Advisor, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, for defendant.

Stewart and Stewart (*Eugene L. Stewart, Terence P. Stewart, James R. Cannon, Jr., Geert De Prest, John M. Breen* and *Amy S. Dwyer*) for defendant-intervenor The Torrington Company.

Frederick L. Ikenson, P.C. (*Frederick L. Ikenson, J. Eric Nissley* and *Joseph A. Perna, V*) for defendant-intervenor Federal-Mogul Corporation.

OPINION

TSOUCALAS, *Judge*: Plaintiffs, NSK Ltd. and NSK Corporation ("NSK"), move pursuant to Rule 56.1 of the Rules of this Court for partial judgment on the agency record alleging that the Department of Commerce, International Trade Administration's ("ITA") refusal to correct an alleged clerical error in relation to the cost of production for one of NSK's cylindrical roller bearings was not supported by substantial evidence on the record and not in accordance with law. NSK requests this Court to remand this action to the ITA to correct this alleged error or, in the alternative, to use NSK's suggested alternative cost of

production data for the cylindrical roller bearing at issue as "best information available" ("BIA").

The administrative determination under review is the ITA's final results in *Antifriction Bearings (Other Than Tapered Roller Bearings and Parts Thereof From Japan; Final Results of Antidumping Duty Administrative Reviews* ("*Final Results*"), 56 Fed. Reg. 31,754 (1991). Substantive issues raised by NSK in the underlying administrative proceeding were addressed by the ITA in the issues appendix to *Antifriction Bearings (Other Than Tapered Roller Bearings and Parts Thereof From the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review* ("*Issues Appendix*"), 56 Fed. Reg. 31,692 (1991).

Background

On June 11, 1990, the ITA initiated an administrative review of ball bearings, cylindrical roller bearings, spherical plain bearings and parts thereof from Japan. *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom Initiation of Antidumping Administrative Reviews* ("*Initiation*"), 55 Fed. Reg. 23,575 (1990). NSK participated in this review. Administrative Record Public ("AR Pub.") Doc. 4.

ITA reviewed NSK's costs of production for cylindrical roller bearings because the ITA had determined in the original less than fair value investigation that NSK was selling cylindrical roller bearings in its home market at below cost of production prices. *See Final Determinations of Sales at Less Than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan*, 54 Fed. Reg. 19,101, 19,107 (1989).

On October 18, 1990, NSK submitted to the ITA its section D questionnaire response containing cost of production information for the part in question. AR Pub. Doc. 406.

On March 15, 1991, the ITA published its preliminary determination in the administrative review finding that NSK sold cylindrical roller bearings at less than fair value during the period of review and at prices less than the cost of production in its home market. *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts thereof from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Antidumping Duty Administrative Reviews* ("*Preliminary Results*"), 56 Fed. Reg. 11,186, 11,188–89 (1991). The margin calculated for NSK's cylindrical roller bearings was 54.77%. *Preliminary Results*, 56 Fed. Reg. at 11,189.

NSK says it was surprised by its high margin in the Preliminary Results and attempted to determine why such a high margin had been imposed. NSK states that it discovered that it had provided incorrect cost of production data for the rollers for one type of cylindrical roller bearing which accounted for many of NSK's cylindrical roller bearing sales in the U.S. market. NSK alleges that its reported cost of production was

ten times the actual cost of production and that this accounted for much of NSK's margin. *Memorandum of Points and Authorities in Support of Motion for Partial Judgment on the Agency Record* ("*NSK's Memorandum*") at 5–6.

On March 20, 1991, NSK submitted a letter to the ITA alleging that NSK had supplied the ITA with inaccurate cost of production data for the part in question. NSK requested the ITA to have a verification team, which was in Japan at that time on another case, verify NSK's corrected information. AR Pub. Doc. 762. NSK stated that it had recently converted production of this part from a batch manufacturing process to a continuous manufacturing process which vastly reduced processing time for each part, but that NSK's computer department had failed to make the required change in the formula used to calculate processing time for the part at issue. As a result, when NSK submitted its cost of production data for the part in question, it submitted the out of date, longer processing time for that part which resulted in vastly increasing its cost of production. *NSK's Memorandum* at 3–7.

In its March 20, 1991 letter, NSK alleged that its clerical error was obvious from an examination of the administrative record before the ITA at the time of the Preliminary Results. NSK stated that the production costs for the roller in question were "more than 5 times the highest reported costs, and nearly 10 times the cost for the most similar rollers." AR Pub. Doc. 762. NSK alleged that this was sufficient information for the ITA to determine that NSK had made a clerical error which should be corrected. *Id.*

On April 11, 1991, NSK submitted its pre-hearing brief in which it expanded its presentation of evidence of an obvious clerical error, submitted alleged correct data, and suggested that if the ITA refused to use the corrected data, that the ITA use cost of production data for the next largest roller size as BIA. AR Pub. Doc. 834.

On July 11, 1991, the ITA published its Final Results in this proceeding. *Final Results*, 56 Fed. Reg. 31,754. ITA stated that NSK's new information was rejected as untimely. *Issues Appendix*, 56 Fed. Reg. at 31,741–42. ITA also stated that it was unable to determine from information on the record that NSK's original submission of information was in error, or that the newly submitted information was correct. *Id.* ITA decided to use NSK's originally submitted information. *Id.* at 31,742. NSK's final margin for cylindrical roller bearings was 51.82%. *Final Results*, 56 Fed. Reg. at 31,756.

Discussion

The Court's jurisdiction over this matter is derived from 28 U.S.C. § 1581(c) (1988).[1]

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[1] 28 U.S.C. § 1581(c) provides in pertinent part:

The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516A of the Tariff Act of 1930.

A final determination by the ITA in an administrative proceeding will be sustained unless that determination is "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B) (1988). Substantial evidence is relevant evidence that "a reasonable mind might accept as adequate to support a conclusion." *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938); *Alhambra Foundry Co. v. United States*, 12 CIT 343, 345, 685 F. Supp. 1252, 1255 (1988).

This Court has also stated "that fair and accurate determinations are fundamental to the proper administration of our dumping laws" and that "courts have uniformly authorized the correction of any clerical errors which would affect the accuracy of a determination." *Koyo Seiko Co. v. United States*, 14 CIT ___, ___, 746 F. Supp. 1108, 1110 (1990); *see, e.g., Daewoo Elecs. Co. v. United States*, 13 CIT 253, 279–80, 712 F. Supp. 931, 954 (1989); *Asociacion Colombiana de Exportadores v. United States*, 13 CIT 13, 28, 704 F. Supp. 1114, 1126 (1989), *aff'd*, 910 F.2d 1089 (Fed. Cir. 1990), *cert. denied*, 111 S.Ct. 136 (1990); *Serampore Indus. Pvt. Ltd. v. United States Dep't of Commerce*, 12 CIT 825, 834, 696 F. Supp. 665, 673 (1988); *Gilmore Steel Co. v. United States*, 7 CIT 219, 223–24, 585 F. Supp. 670, 674 (1984); *Atlantic Sugar, Ltd. v. United States*, 1 CIT 211, 511 F. Supp. 819 (1981).

Defendant-intervenor Federal-Mogul Corporation took no part in this phase of this proceeding since it does not produce cylindrical roller bearings and therefore does not have standing to support the contested determination in regard to NSK's cylindrical roller bearings. *Federal-Mogul Corporation's Response to Plaintiffs' Motion for Judgment on the Agency Record* at 2.

1. *Clerical Error:*

ITA has promulgated a regulation which sets time limits on the submission of factual information in administrative reviews. The regulation states in pertinent part:

> **§ 353.31 Submission of factual information.**
>
> (a) *Time limits in general.* (1) Except as provided in paragraphs (a)(2) and (b) of this section, submissions of factual information for the Secretary's consideration shall be submitted not later than:
>
> * * * * * * *
>
> (ii) For the Secretary's final results of an administrative review under § 353.22 (c) or (f), the earlier of the date of publication of notice of preliminary results of review or 180 days after the date of publication of notice of initiation of this review;
>
> * * * * * * *
>
> (2) Any interested party * * * may submit factual information to rebut, clarify, or correct factual information submitted by an interested party * * * at any time prior to the deadline provided in this section for submission of such factual information or, if later, 10 days after the date such factual information is served on the interested party * * *.

> (3) The Secretary will not consider in the final determination or the final results, or retain in the record of the proceeding, any factual information submitted after the applicable time limit.

19 C.F.R. § 353.31(a) (1991).

It is clear from the administrative record before this Court that NSK attempted to provide the ITA with factual information to correct its alleged clerical error after the publication of the Preliminary Results of this review and over 180 days from the publication of the initiation of this review. *Compare Initiation*, 55 Fed. Reg. 23,575, *with Preliminary Results*, 56 Fed. Reg. 11,186 *and* AR Pub. Doc. 762.

In general, this Court has upheld the ITA's rejection of untimely submitted factual information pursuant to 19 C.F.R. § 353.31(a). *See, e.g., Asociacion*, 13 CIT at 24, 704 F. Supp. at 1124; *Seattle Marine Fishing Supply Co. v. United States*, 12 60, 71, 679 F. Supp. 1119, 1128 (1988).

However, this Court has also stated that in cases where corrected information was untimely filed and rejected by the ITA, "if [an] error was so egregious and so obvious that the failure to correct it was an abuse of discretion and undermined the interests of justice, the Court may remand the case to the ITA for adjustment of the calculations." *Tehnoimportexport v. United States*, 15 CIT ____, ____, 766 F. Supp. 1169, 1178 (1991).

In an effort to reconcile 19 C.F.R. § 353.31(a) with this Court's decision in *Tehnoimportexport*, the ITA has decided that an error in original information submitted by a respondent must be obvious from the administrative record in existence at the time the error is brought to the ITA's attention. Also, the ITA must be able to tell from the administrative record in existence at the time the error is pointed out, that the untimely submitted new information is correct. *Issues Appendix*, 56 Fed. Reg. at 31,741. This Court finds that this is a reasonable exercise of the ITA's discretion in implementing 19 C.F.R. § 353.31(a) and is in accordance with law.

Therefore, the question before the Court is whether the ITA's determination that the original information submitted by NSK was not obviously in error and that the newly submitted information was not obviously correct was supported by substantial evidence.

In its March 20, 1991, letter to the ITA pointing out the alleged error, NSK makes much of the fact that its reported cost of production for the roller in issue was five to ten times higher than the cost of production reported for similar rollers. AR Pub. Doc. 762.

In its pre-hearing brief submitted April 11, 1991, NSK provided detailed *new information* on the production process for the roller at issue, as well as corrected cost of production information, in an attempt to convince the ITA to correct the alleged error. AR Pub. Doc. 834.

The submission of detailed factual information at the pre-hearing brief stage of an administrative review is clearly untimely under any circumstances. The ITA was justified in rejecting this information as untimely. 19 C.F.R. § 353.31(a). In addition, the volume of information

which NSK felt obliged to present to the ITA lends support for the position that the error alleged by NSK was anything but obvious.

While NSK alleges that a cost of production five to ten times higher than that reported for similar cylindrical roller bearings is evidence that an error has occurred, this is not necessarily true. Different production techniques will result in different costs of production. There is no obvious evidence in the administrative record, as it existed at the time NSK notified the ITA of the alleged error, of what the production process for the roller at issue was. There was no reason to believe, without further inquiry by the ITA, that the roller was, or was not, being produced by the same method as the other rollers used in similar cylindrical roller bearings. It is just this sort of open-ended inquiry which the ITA rightly seeks to avoid in these situations.

NSK also relies on 19 U.S.C. § 1675(f) (1988) which allows the ITA the discretion to correct ministerial errors in final determinations.[2] NSK's reliance on section 675(f) is misplaced since this section clearly applies only to clerical errors discovered in a final determination and not to alleged errors in a respondent's own submissions discovered in a preliminary determination.

Therefore, this Court finds that it was reasonable for the ITA to determine that the information available on the administrative record, at the time the alleged error was pointed out by NSK, was insufficient to show that a clerical error that should be corrected had been made. The ITA's decision that NSK's originally submitted information was correct and to use that information in calculating NSK's margins was supported by substantial evidence on the record and was in accordance with law.

2. *Best Information Available:*

NSK argues that if the ITA was justified in rejecting its corrected information, the ITA should be required to use alternative information as BIA. NSK suggests that the Court require the ITA to use the cost of production information previously submitted for the cylindrical roller bearing which NSK claims is most similar to the cylindrical roller bearing at issue here. *NSK's Memorandum* at 19–20; *Plaintiffs' Reply Memorandum in Support of Motion for Partial Judgment on the Agency Record* at 16–18.

19 U.S.C. § 1677e(c) (1988) provides that:

> In making their determinations under this subtitle, the administering authority and the Commission shall, whenever a party or any other person refuses or is unable to produce information re-

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[2] 19 U.S.C. § 1675(f) states:

(f) Correction of ministerial errors.

The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section [*i.e.*, administrative reviews] * * *. As used in this subsection, the term 'ministerial error' includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.

See also 19 C.F.R. § 353.28 (1991).

> quested in a timely manner and in the form required, or otherwise significantly impedes an investigation, use the best information otherwise available.

See also 19 C.F.R. § 353.37 (1991).

It is clear from the language of the statute that the use of BIA is not warranted in this situation. ITA is to use BIA only in situations where a respondent has refused to provide requested information, is unable to provide the information within the time limits set by the ITA or in the form required by the ITA, or if the information provided by the respondent cannot be verified. 19 U.S.C. § 1677e(c). In this case NSK provided the information requested on time and in the form required. The fact that the ITA chose not to verify NSK's cost of production submission does not mean that the information provided by NSK failed verification. Therefore, the prerequisites for the use of BIA by the ITA were not met.

CONCLUSION

The ITA's decision not to correct NSK's alleged clerical error in regard to the cost of production of one cylindrical roller bearing was supported by substantial evidence on the record and in accordance with law. Also, the prerequisites for the use of BIA were not met.

(Slip Op. 92–141)

DIANE PIETROFESO, PLAINTIFF *v.* UNITED STATES, ET AL., U.S. CUSTOMS SERVICE, CAROL HALLETT, COMMISSIONER OF CUSTOMS, AND NICHOLAS BRADY, SECRETARY OF THE TREASURY, DEFENDANTS

Court No. 91–12–00897

[Defendants' motion for judgment on the agency record denied. Remanded.]

(Dated August 25, 1992)

Bettina Schein, Esq. for plaintiff.

Stuart M. Gerson, Assistant Attorney General, *Joseph I. Liebman*, Attorney-in-Charge, International Trade Field Office, (*Pamela G. Larrabee*), United States Department of Justice, Civil Division, for the defendants.

OPINION

RESTANI, *Judge*: On December 20, 1991, plaintiff filed a summons and Complaint with the Clerk of this court, contesting the decision of the Secretary of the Treasury to affirm the denial of her application for a customs broker's license. Defendants have moved for judgment upon the administrative record, and dismissal of the action.

This court has jurisdiction to review the denial of an application for a customs broker's license pursuant to 28 U.S.C. § 1581(g)(1) (1988).[1] 19 U.S.C. § 1641(e)(3) (1988) provides that the factual findings of the Secretary of the Treasury are conclusive if supported by substantial evidence. 28 U.S.C. § 2640(a)(5) (1988) provides, however, that an appeal of a license denial shall be determined on the basis of the evidence presented to the court. As plaintiff did not seek leave to present additional evidence to the court, as permitted by 19 U.S.C. § 1641(e)(4),[2] the court shall decide this matter based only upon the record that was before the agency.

BACKGROUND

On August 28, 1989, the Customs Service received plaintiff's application for a customs broker's license.[3] The application revealed that the applicant was 28 years old and that she had worked in the customs field since 1982. She stated that the license would entitle her to raises and promotions at her place of employment. Plaintiff passed the written broker's examination required by 19 C.F.R. § 111.13. Her application was then sent to the office of the Special Agent in Charge, JFK Airport, in order for a background investigation to be conducted pursuant to 19 C.F.R. § 111.14.

The results of the background investigation are set forth in the Report of Investigation, dated May 22, 1990. A heavily redacted version of this report is contained in the administrative record. The report revealed that plaintiff had no arrest record. Interviews with plaintiff's employers and listed references bared no negative information regarding plaintiff. *See* Administrative Record Document ("A. Rec. Doc.") B at 7 (plaintiff was a "good employee"); *id.* at 8 (all references "responded favorably to the qualifications, integrity, and honesty of "plaintiff]"). The report ultimately noted that "no derogatory information on the applicant" had been uncovered. *Id.* at 2.

The background inquiry indicated, however, that plaintiff was "the niece of John Gotti (reputed leader of the Gambino Crime Family), and

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[1] This section provides as follows:

(g) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review—

(1) any decision of the Secretary of the Treasury to deny a customs broker's license under section 641(b)(2) or (3) of the Tariff Act of 1930, or to deny a customs broker's permit under section 641(c)(1) of such Act, or to revoke a license or permit under section 641(b)(5) or (c)(2) of such Act; * * *

28 U.S.C. § 1581(g)(1) (1988).

[2] This section provides, in part, as follows:

If any party applies to the court for leave to present additional evidence and the cost is satisfied that the additional evidence is material and that reasonable grounds existed for the failure to present the evidence in the proceedings before the hearing officer, the court may order the additional evidence to be taken before the hearing officer and to be presented in a manner and upon the terms and conditions prescribed by the court.

19 U.S.C. § 1641(e)(4) (1988).

[3] A customs broker's license may be granted to an individual by the Secretary of the Treasury pursuant to the following provision:

The Secretary may grant an individual a customs broker's license only if that individual is a citizen of the United States. Before granting the license, the Secretary may require an applicant to show any facts deemed necessary to establish that the applicant is of good moral character and qualified to render valuable service to others in the conduct of customs business. In assessing the qualifications of an applicant, the Secretary may conduct an examination to determine the applicant's knowledge of customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters.

19 U.S.C. § 1641(b)(2) (1988).

the daughter of Peter Gotti, (reputed captain of this criminal organization)." *Id.* at 2. A significant portion of the report was devoted to describing the criminal histories of various members of the Gotti family, including a number of criminal convictions of the applicant's father and her uncles, John and Eugene Gotti. The report noted that the Gambino family "influence[s] * * * commercial trade through trucking, warehousing, and union controls at JFK Airport and the Brooklyn Waterfront." *Id.* at 23. The only explicit reference in the report to plaintiff's associations with her family is a reference to plaintiff's 1989 wedding reception, which the report indicated was arranged by her father and attended by a number of alleged Gambino crime family members. *Id.* at 15.

Plaintiff's husband, Paul Pietrofeso, was also mentioned in the report. Mr. Pietrofeso purchased a partial ownership of a company, Cory Contemporary Contractors Inc. ("Cory"), in 1989. The report stated that a discrepancy was uncovered during the interview of Cal Classi, Mr. Pietrofeso's cousin and the president of Cory. Although Mr. Pietrofeso stated that he purchased his share of Cory for between $20,000 and $30,000 on August 1, 1989, Mr. Classi reported that Mr. Pietrofeso's investment consisted only of a "van and some tools." *Id.* at 11. A financial inquiry revealed that on August 8, 1989, Mr. Pietrofeso deposited $15,000 in cash into Cory's bank account.[4] The report also contained the statement that "additional [ ][5] intelligence revealed that Paul Pietrofeso is well thought of within the structure of the Gambino Crime Family." *Id.* at 13.

In a letter dated February 22, 1991, plaintiff was informed that her customs broker's application had been denied. The letter stated that "[t]he required investigation * * * indicated derogatory information, namely that you are related by blood and marriage to organized crime members." A. Rec. Doc. E at 1. Plaintiff appealed the denial to the Commissioner of Customs, and was permitted to make an oral presentation and submit a written memorandum in opposition to the denial. In her memorandum plaintiff denied that she was "related by blood and marriage to organized crime members," and alternatively that such relationship could not be the basis for the license denial. In a letter dated July 11, 1991, plaintiff was informed that Customs had upheld the denial.

Plaintiff appealed this decision to the Secretary of the Treasury ("Secretary"). By a letter dated October 21, 1991, the Assistant Secretary of the Department of Treasury (Enforcement), informed plaintiff's counsel that plaintiff's application was being denied under 19 C.F.R.

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[4] Of this amount, $14,000 was "in hundreds." Mr. Pietrofeso did not offer an explanation as to the source of the capital.

[5] A word or phrase has been redacted from the public version of the report.

§§ 111.16(b) and 111.16(b)(3).[6] The letter stated that plaintiff's "relationships with reputed organized crime members" constituted sufficient grounds for the denial under the relevant regulations. A. Rec. Doc. M at 1.

Plaintiff commenced this civil action seeking review of the October 21 determination by the Secretary. The government maintains that plaintiff's relationships with reputed-organized crime members constitute sufficient grounds for the denial of her application and, accordingly, the decision of the Secretary should be affirmed.

Discussion

Although the Customs Service denied plaintiff's application based solely upon 19 C.F.R. § 111.16(b)(3) ("[a] failure to establish the business integrity and good character of the applicant"), the Secretary's decision rested upon 19 C.F.R. § 111.16(b)(3) and the catch-all 19 C.F.R. § 11.16(b) ("The causes sufficient to justify denial * * * shall include, *but need not be limited to* * * *.") (emphasis added). Therefore, it is necessary to view the Secretary's decision through this more general prism.

Plaintiff argues that the Secretary's decision violates substantive and procedural due process, and freedom of association, and was arbitrary, capricious, an abuse of discretion, and not in accordance with the law.

I. *Due Process:*

Plaintiff claims that the denial of her application violated her right to procedural due process under the Fifth Amendment to the United States Constitution. Plaintiff contends that she has a legitimate claim of entitlement to the license according to the Customs Regulations, and this suffices as a property interest in a benefit. Plaintiff also maintains that she has a protected liberty interest in both engaging in a customs occupation and in her reputation. Defendants argue that plaintiff lacks either a protected property or liberty interest.

The requirements of procedural due process do not apply to a limitless range of interests; rather, a prior hearing is required only where a property or liberty interest is at stake. *Board of Regents v. Roth*, 408 U.S. 564, 569–70 (1972)[7]. Of course, the property interests protected by procedural due process extend beyond a narrow construction of "real property," reaching "interests that a person has already acquired in specific benefits." *Id.* at 576. Thus, where a person has a legitimate claim of entitlement to a benefit, that person is entitled to procedural due process.

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[6] The pertinent sections provide:

> **(b) Grounds for denial.** The causes sufficient to justify denial of an application for a license shall include, but need not be limited to:
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> * * * * * * * * *
>
> (3) A failure to establish the business integrity and good character of the applicant;
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> * * * * * * * * *

19 C.F.R. § 111.16(b) (1991).

[7] *Roth* and most of the other cases cited in this opinion involve procedural due process under the Fourteenth Amendment; however, the same analysis applies under the due process clause of the Fifth Amendment.

See Scott v. Kewaskum, 786 F.2d 338, 339 (7th Cir. 1986) quoting *Roth*, 408 U.S. at 577).[8]

In this case, the statute and controlling regulations clearly do not provide an applicant with an entitlement to a customs broker's license. The statute does not tell the Secretary when he or she must grant a license. *See* 19 U.S.C. § 1641(b)(2) (1988) ("The Secretary may grant an individual a customs broker's license * * *) (emphasis added). Likewise, the regulations provide the Secretary with a certain amount of discretion. *See supra* n.6. To construe the statute and regulations as granting an applicant a property interest in a customs broker's license would curb the Secretary's discretion in a manner inconsistent with such statute and regulations. In *Scott v. Kewaskum*, the Seventh Circuit held that a village board's denial of a liquor license did not deprive applicants of a property interest within the meaning of the Fourteenth Amendment. *Scott*, 786 F.2d 338. The *Scott* court observed that the Wisconsin statute governing the grant of liquor licenses conditions licenses on the citizenship, age and good moral character of the applicant. *Id.* at 340. The court noted, however, that "although the statute specifies people to whom licenses must be denied, it does not say when a license must be granted." *Id.* Ultimately, the court concluded, the lack of substantive criteria in the statute meant that there was no "property" interest.[9] This rationale has clear application to the statute and regulations pertaining to customs brokers' licenses; nowhere do these provisions state in which situations a customs broker's license *must* be granted. Thus, plaintiff's argument that she has a property interest in obtaining a customs broker's license is not persuasive.

Plaintiff also bases her procedural due process argument on the deprivation of a constitutionally protected liberty interest. As used in the due process clause, "liberty" includes

> the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized * * * as essential to the orderly pursuit of happiness by free men.

Roth, 408 U.S. at 572 (quoting *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923)). Plaintiff has not been denied the right to work in any of the "common occupations"; absent a customs broker's license, plaintiff may still work in the field of customs and pursue a career in this area.

There is some question as to whether a constitutionally protected liberty interest also may be implicated where a person's reputation is dam-

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[8] The person must demonstrate more than an abstract need or desire for a property interest, and must show more than simply a unilateral expectation of it. *Roth*, 408 U.S. at 577.

[9] Decisions holding that applicants have a constitutionally protected property right in a license are distinguishable because these cases do not involve statutes that grant the licensing authority broad discretion to deny the application. *See, e.g., Charry v. Hall*, 709 F.2d 139, 144 (2d Cir. 1983) (applicant had a legitimate claim of entitlement to take the examination for the professional status of psychologist, and "[d]ecisions to the contrary are distinguishable on the ground that, unlike the present case, they involved statutes granting broad and almost unlimited discretion to the licensing authority to deny the application.").

aged. *See Siegert v. Gilley*, 111 S.Ct. 1789, 1793–94 (1991). In any case, the offending federal action must be sufficiently serious to affect government employment, (*see Paul v. Davis*, 424 U.S. 693, 706 (1976)), or must significantly foreclose plaintiff's "freedom to take advantage of other employment opportunities." *Bollow v. Fed. Reserve Bank of San Francisco*, 650 F.2d 1093, 1101 (9th Cir. 1981) (quoting *Jablon v. Trustees of Cal. State Colleges*, 482 F.2d 997, 1000 (9th Cir. 1973), *cert. denied*, 414 U.S. 1163 (1974)). Furthermore, accusations rise to the level of harming a person's good name, reputation or integrity only when they are publicized. *Id.* at 1101. There have been no allegations that the Customs investigatory report was published to plaintiff's employer or that she has suffered any loss of reputation in her employer's eyes, because of disclosure of her family relationships. Because the court determines that the license denial does not affect plaintiff's property or liberty interests, she cannot show that her due process rights were violated.

II. *Freedom of Association:*

The First Amendment right to freedom of association protects "certain kinds of highly personal relationships." *Roberts v. United States Jaycees*, 468 U.S. 609, 618 (1984). Plaintiff argues that by denying her license solely on the grounds of family relations, the Secretary has violated her right to associate freely with her family.[10] The government, although not disputing that plaintiff's intimate relationships with her family are afforded special constitutional protection,[11] maintains that even fundamental rights must give way to compelling governmental interests. The government argues that the Secretary could have reasonably concluded that the compelling governmental interest in preventing use of a customs broker's license for money laundering or importation of illegal merchandise outweighs the protection afforded plaintiff's connections with her family.

As noted earlier, the investigation disclosed no derogatory information about plaintiff. The application was rejected by the Secretary for one or both of the following reasons: (1) family ties to reputed organized crime members (§ 111.16(b)); or (2) the applicant's character and business integrity are tainted by her family relationship to alleged mobsters (§ 111.16(b)(3)).

The reasoning of the Ninth Circuit in *Kraft v. Jacka*, 872 F.2d 862 (9th Cir. 1989) is instructive. In *Kraft*, plaintiffs (Sydell Kraft and three corporate plaintiffs) applied to the Nevada Gaming Board ("the Board") for

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[10] Although plaintiff cites to cases discussing *criminal* liability based on associations with certain individuals, the reasoning of those cases applies to civil matters, as well. The imputation of guilt or individual responsibility because of mere association is an anathema to our system of justice. *See generally Plyler v. Doe*, 457 U.S. 202, 220 (1982) ("legislation directing the onus of a parent's misconduct against his children does not comport with fundamental conceptions of justice."). As Rosalind observed in *As You Like It*, "[t]reason is not inherited." William Shakespeare, *As You Like. It*, act 1, sc. 3, ln. 61, p. 375 (Riverside 1974).

[11] The Supreme Court has recognized that "freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." *Moore v. City of East Cleveland*, 431 U.S. 494, 499 (1977) (plurality opinion) (quoting *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639-640 (1974)); *see also Loving v. Virginia*, 388 U.S. 1, 12 (1967). Numerous cases have "consistently acknowledged a 'private realm of family life which the state cannot enter." *Moore*, 431 U.S. at 499 (quoting *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944)). *See also Planned Parenthood v. Casey*, 60 U.S.L.W. 4795, 4800 (U.S. June 29, 1992).

licenses to manufacture, distribute and operate gaming devices. While these applications were pending, the Board became concerned about the suitability for licensing of the corporate plaintiffs and their president Howard Levin. Ultimately, plaintiffs received limited, one-year licenses. When plaintiffs applied for permanent licenses, the Board again raised numerous concerns about Levin and two of the corporate plaintiffs. Prior to the Board's decision, plaintiffs withdrew the applications of the two corporations. Levin's interests were transferred to Kraft, with whom he had a close personal relationship. Thus, the Board considered only the applications of Kraft and the one remaining corporate entity. The Board voted to recommend denial of the application. The issue before the court was whether Kraft's right to free association had been violated when the Board refused to grant her application for a gaming license because she would not terminate her personal relationship with a certain "unsuitable" individual. *Id.* at 871–73.

Noting that although "[t]he relationship between Kraft and Levin as cohabitating, single adults may fit within our description of an intimate protected association * * *," the court held that it did not need to reach this issue because it concluded that the actions of the Board did not violate plaintiff's free association right. *Id.* at 872. The crucial step in the court's reasoning was the following observation:

> On the surface, the Board might appear to be violating Kraft's fourteenth amendment right by conditioning receipt of a gaming license on the termination of a possibly protected relationship. However, the Board did not deny licensing because it disapproved of the fact that Levin and Kraft were unmarried. The personal relationship between Kraft and Levin was not even the principal reason for the denial. The Board members clearly indicated that the personal relationship would not have been a deciding factor in the decision to deny further licensing if the transfer of control over TAG-Nevada from Levin to Kraft had not looked so much like a mere subterfuge.

Id. at 872. The court emphasized that the decision of the Board was "based on the appearance of subterfuge and the possibilities Levin would have to exert control over TAG-Nevada [the remaining corporate applicant] through his personal relationship with Kraft." *Id.* at 873. The court also emphasized that a compelling governmental interest was at stake, namely, the need to prevent criminal or corrupt elements from gaining a foothold in licensed gaming. The Nevada statute specifically provided for the strict regulation of all persons involved in gaming establishments in order to preserve the public confidence in the honest and competitive conduct of the industry. *See id.* at 872–73.[12]

The *Kraft* court concluded that "[b]ecause the Board's denial of licensing was directly related to a significant state interest, the Board's action did not violate any free association right Kraft may have." *Id.* at

[12] In fact, the Nevada statute stated that a gaming license should not be granted unless the Nevada Gaming Commission was satisfied that the applicant's "reputation, habits and *associations* do not pose a threat to the * * * effective regulation and control of gaming. * * *" *Id.* at 867 n.6 (quoting Nev. Rev. Stat. § 463.170(2)(b)) (emphasis added).

873. In the case before the court, the government maintains that, like the gambling industry, the customs field must be kept free from even the suggestion of criminal influences. The government argues that legislative history surrounding licensing of customs brokers indicates that Congress intended the Secretary to have similarly wide discretion in licensing.[13] Although the emphasis in the legislative history is on supervising and regulating the activities of customs brokers to prevent fraud, Congress clearly intended the Secretary as part of his supervisory duties to take steps to insure that customs brokers are honest. Customs brokers are fiduciaries, in whom the public must have trust. Thus, keeping organized crime out of the key importing roles would further important governmental interests in both its own operations and the public welfare. The issue here is whether in attempting to effectuate these significant governmental interests, the Secretary has employed the proper analysis and come to substantially supported factual findings.

We turn first to the question of whether the Secretary has violated plaintiff's right of association by denying her a license based upon her marital relationship. Although the marital relationship may not be interfered with lightly, *see Zablocki v. Redhail*, 434 U.S. 374, 384–85 (1978), a compelling governmental interest in preventing illegal activity in importing may justify the limited intrusion discussed here. Customs brokers are largely unsupervised; a licensed customs broker who may be influenced or controlled by organized crime figures provides a ripe opportunity for illegal activity. If plaintiff cohabitates with her husband and he is engaged in organized crime, she may be denied a license even though she has no personal history of criminal activity, if the Secretary is able to draw the reasonable inference that she would not be in a position to avoid improper influence or intimidation in her importing duties. Here, however, the Secretary has not stated expressly that this inference is drawn.

It should be borne in mind that under 19 C.F.R. § 111.16(b) plaintiff has the burden of establishing her business integrity, including her ability to function freely as a legitimate customs broker. Plaintiff made no effort to show she has the ability to insulate herself from improper influence or intimidating tactics by her husband. Rather, apart from the constitutional issues, her argument is that her husband is not involved in organized crime, and therefore, the Secretary has no basis for concluding she would be subject to illegal influence or intimidation.

For its part, the government has not placed in the record information demonstrating that plaintiff's husband lacks legitimate source of income or that he does business with organized crime figures. There is-

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[13] [I]n view of the large opportunities for profitable fraud open to dishonest persons who, from the very nature of things, occasionally succeed in obtaining licenses as customhouse brokers despite the strictest possible investigation by the Treasury of their character and qualifications, it is essential that the Department have wide discretion in dealing with these brokers and that the Secretary of the Treasury, therefore, be given broad powers to supervise and regulate their activities. Under existing law his powers in these respects are very limited, and it is the purpose of the present amendments to broaden the Secretary's powers so that he can in the future more effectively cope with frauds practiced by customhouse brokers on both importers and the revenues of the United States.

S. Rep. No. 1170, 74th Cong., 1st Sess. 3 (1935).

only the weakest hearsay evidence of his link to organized crime and none at all linking him to criminal activities at Kennedy airport. The court is not convinced that the evidence in the record demonstrates a connection to organized crime or criminal activity in the venue in which plaintiff seeks to work. Furthermore, there is no indication in the record indicating that the allegations of a link to organized crime are reliable. *Cf. Anderson v. United States*, 16 CIT ____, ____, Slip Op. 92–66, at 8–9 (May 7, 1992) (reliable hearsay evidence may be considered in administrative proceedings). Accordingly, the record does not reveal that this aspect of the Secretary's decision is based on substantial evidence. Thus, remand is necessary for further explanation and consideration of evidence of the source of income of plaintiff's husband and his relationship, if any, to criminal activity, as well as the potential affect of such activity on plaintiff. Both the Secretary and the plaintiff should address themselves to the relevant inquiries.

Plaintiff's relationships with her blood relatives are subject to a similar analysis. Different questions, however, remain unanswered. The record reveals that some of the applicant's relatives are or were engaged in criminal activity. The record is less clear as to how this activity affects the importing venue in which the applicant is likely to work, and how the applicant would be affected.

As indicated, the court received a highly redacted version of a Customs investigatory report. It does not reveal the source of most of the information it contains and there are no explanatory memoranda in the record. There is simply a one-line conclusion that plaintiff's family members are involved in organized crime. There is no rational relationship between mere blood relationships and character or business integrity. There may, however, be a rational relationship between legitimate concerns for business integrity and close associations with organized crime figures.[14] The government seems to want the court to take judicial notice of certain facts about organized crime and familial relationships of persons associated with organized crime. The determination at issue, however, is one which must be supported by the record. It is up to the Customs Service and the Secretary to determine whether plaintiff's business integrity is negatively affected because she is likely to be influenced or controlled by persons involved in criminal activities and, if so, to state why they have drawn such a conclusion. This analysis is absent from the record before the court.

Accordingly, this matter is remanded for forty-five days within which the Secretary shall analyze the data in the record for reliability, gather new data if necessary, explain his conclusions and, if the conclusions are adverse to plaintiff, give plaintiff an opportunity to respond.

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[14] Plaintiff has not raised a claim based on the Equal Protection clause of the Constitution; therefore, the court need not decide whether decisions based solely on blood relationships warrant a higher level of scrutiny than a simple rational basis test. Courts apply a stricter scrutiny to legislation which classifies according to a "suspect basis," (*see, e.g., Palmore v. Sidoti*, 466 U.S. 429, 432 (1984) (racial classifications "subject to the most exacting scrutiny"); *Graham v. Richardson* 403 U.S. 365, 372 (1971) ("classifications based on alienage, like those based on nationality or race are inherently suspect")), or limits fundamental constitutional rights, *see, e.g., Kramer v. Union Free School District*, 395 U.S. 621, 626 (1969) (voting).

(Slip Op. 92–142)

WIN-TEX PRODUCTS, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 92–04–00302 (BN)

OPINION AND ORDER

Appearances:

Adduci, Mastriani, Meeks & Schill (*Ralph H. Sheppard, Jeffrey A. Meeks*, and *Barbara A. Murphy*, Esqs.) for plaintiff.

Stuart M. Gerson, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, Department of Justice (*Jeffrey M. Telep*, Attorney); *J.C. Lowe*, Attorney-Advisor, Office of the Deputy Chief Counsel for Import Administration, Department of Commerce, for defendant.

(Dated August 26, 1992)

[Plaintiff's application to supplement administrative record denied.]

NEWMAN, *Senior Judge*: The court is again confronted with the frequently revisited issue of supplementing the administrative record for judicial review of antidumping proceedings.

BACKGROUND

On October 4, 1983, the Department of Commerce ("Commerce") issued an antidumping duty order in *Shop Towels Of Cotton From The People's Republic of China; Antidumping Duty Order*, 48 Fed. Reg. 25,277 (October 4, 1983). On March 12, 1991, plaintiff requested Commerce to clarify the scope of the antidumping duty order and sought a ruling that its shop towels imported from Honduras were not within the scope of the order. After conducting a "scope proceeding," on March 31, 1992 Commerce issued its *Final Scope Ruling on the Request for Clarification of the Scope of the Antidumping Duty Order on Shop Towels of Cotton From The People's Republic of China* ("*1992 Scope Ruling*"). Commerce determined that plaintiff's shop towels from Honduras fall within the scope of the 1983 antidumping duty order. *Id.*

In this action, plaintiff contests Commerce's *1992 Scope Ruling*, which-is judicially reviewed on the administrative record, statutorily defined as follows:

> For purposes of this subsection, the record, unless otherwise stipulated by the parties, shall consist of–
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> (i) a copy of all information presented to or obtained by [the agency] during the course of the administrative proceeding, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be kept by section 1677f(a)(3) of this title; and
>
> (ii) a copy of the determination all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

19 U.S.C. § 1516a(b)(2)(A). *See also* CIT Rule 71(a) (filing of administrative record with Clerk).

Currently before the court for decision is plaintiff's application for an order to supplement the *1992 Scope Ruling* administrative record that defendant filed with the Clerk on July 9, 1992. Plaintiff seeks to add to the record two 1984 letter communications between plaintiff and Commerce pertaining to the latter's exclusion of plaintiff's "Wipe-Eze" utility towels in an earlier 1984 scope determination and "all other" scope rulings or opinions issued by Commerce in connection with the 1983 antidumping duty order (all the foregoing documents collectively referred to hereinafter as "proposed supplemental materials").

PARTIES' CONTENTIONS

Plaintiff contends that the administrative record must include the proposed supplemental materials because: (1) Commerce is required to consider all relevant documents in evaluating whether a particular product is within the scope of an antidumping duty order; (2) the 1984 scope ruling sought to be included in the record of the *1992 Scope Ruling* covers a similar product and the identical issues now raised; (3) Commerce's omission of the proposed supplemental materials creates substantial legal and factual questions regarding whether the *1992 Scope Rule* a is based on substantial evidence and is otherwise in accordance with law; (4) Commerce stated in the *1992 Scope Ruling* that "Documents from the underlying investigation deemed relevant by the Department to the scope of the outstanding order were made a part of the record to the instant scope inquiry"; (5) *Floral Trade Council v. United States*, 13 CIT 242, 709 F. Supp. 229 (1989), requires documents that are "sufficiently intertwined" with the relevant inquiry to be included in the administrative record; and (6) the 1984 ruling and related documents, as well as any other scope determinations pertaining to the underlying antidumping duty order, should have been considered by Commerce in making its determination in the *1992 Scope Ruling* and should now be part of the administrative record for judicial review of that ruling.

Defendant opposes supplementation of the record on the grounds that: (1) plaintiff failed to present the proposed supplemental materials from 1984 to Commerce during the *1992 Scope Ruling* proceedings; (2) since Commerce did not receive, obtain or consider the proposed supplemental materials in connection with the *1992 Scope Ruling*, in accordance with 19 U.S.C. § 1516a(b)(2)(A) they are extraneous to the administrative record; (3) in addition to the statutory definition of the administrative record, plaintiff was on notice as to content of the record by virtue of Commerce's August 29, 1991 letter to all interested parties initiating the *1992 Scope Ruling* proceedings stating, "Documents that are not presented to the Department, or placed by it on the record, will *not* constitute part of the administrative record attendant to this scope determination." (Emphasis in original) (Administrative Record at 8); (4) the statement in the *1992 scope Ruling* referencing as part of the administrative record "Documents from the *underlying investigation* deemed relevant by the Department," etc. refers to the documents from

the antidumping duty investigation *per se* and not proceedings subsequent to the antidumping duty order; and (5) *Floral Trade*, relied on by plaintiff, is distinguishable from the instant case.

DISCUSSION

Despite the undisputed relevance of the proposed supplemental materials to the current action, the court is constrained to deny plaintiff's application essentially for the reasons advanced by defendant.

The single judicial precedent called to the court's attention by plaintiff permitting supplementation of the record—*viz.*, *Floral Trade*—is factually and legally distinguishable from the current matter. In *Floral Trade*, Commerce in its scope ruling stated without qualification that it had examined the underlying antidumping duty investigations plaintiffs sought to include in the administrative record of the scope proceeding. Significantly, the *Floral Trade* court pointed to the agency's "broad embrace of the earlier records" and found that the agency "expressly incorporated" such information into the scope proceeding at issue. Hence, the *Floral Trade* court concluded that "without such information the decision at issue [scope determination] cannot be reviewed properly." 13 CIT at 243, 709 F. Supp. at 230–31.

It was within the foregoing critical factual context in *Floral Trade*, wherein the earlier documents from the underlying investigations had admittedly been reviewed by Commerce in the course of the scope proceedings but nonetheless excluded from the administrative record for judicial review, that the *Floral Trade* court held that documents sufficiently intertwined with the relevant inquiry are part of the record no matter how or when they arrived at the agency. The court fully agrees with defendant that the obvious meaning of "underlying investigations" referenced by Commerce in its *1992 Scope Ruling* applies only to the investigations leading up to the antidumping duty order and not to subsequent scope proceedings. The "underlying investigations" Commerce had in mind in its 1992 ruling are not germane to plaintiff's motion and neither is *Floral Trade*.

While on the one hand *Floral Trade* holds that documents at the agency which become sufficiently intertwined with the relevant inquiry are part of the record, no matter how or when they arrived at the agency, on the other hand *Floral Trade* makes clear that all documents obtained in investigations are not *automatically* part of or "intertwined" with the record of related investigations. Indeed, "[t]he record for judicial review should ordinarily not contain material from separate investigations." *Bethlehem Steel Corporation v. United States*, 5 CIT 236, 566 F. Supp. 346 (1983). Thus, in denying plaintiff's motion, this court again adheres to the guiding general principle of administrative law that "[r]eview of agency determinations in antidumping proceedings is to be undertaken upon the basis of the record made before the agency. *Nakajima All Co., Ltd. v. United States*, 2 CIT 25, 26 (1981).

Despite Commerce's August 29, 1991 explicit admonition regarding the restrictive content of the record of the scope proceedings, plaintiff

inexplicably failed to exercise diligence in seeking to include the proposed supplemental materials from 1984 in the record of the administrative proceedings leading to the *1992 Scope Ruling*.[1] Moreover, Commerce did not refer to such materials in its ruling. Under these circumstances, the court is unable to conclude that the proposed supplemental materials have "become sufficiently-intertwined with the relevant inquiry" within the principle enunciated in *Floral Trade*.

Accordingly, it is hereby ORDERED: Plaintiff's motion to supplement the administrative record is denied.

(Slip Op. 92–143)

GROUP ITALGLASS U.S.A., INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 91–10–00745 (BN)

OPINION AND ORDER

Appearances:

Soller, Shayne & Horn (*Paulsen K. Vandervert*, Esq.) for plaintiff.

Stuart M. Gerson, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office (*Mark S. Sochaczewsky*, Esq.), Commercial Litigation Branch, Civil Division, United States Department of Justice; *Steven Berke*, Attorney, United States Customs Service, for defendant.

[Motion for summary judgment denied.]

(Dated August 25, 1992)

NEWMAN, *Senior Judge*: In this civil action brought pursuant to 19 U.S.C. § 1515 contesting the denial of the administrative protests filed in accordance with 19 U.S.C. § 1514(a), the complaint raises the issue of the proper tariff classification and rate of duty under the Harmonized Tariff Schedule of the United States ("HTSUS") on certain importations by Group Italglass USA, Inc. ("Italglass") in 1989–90 of "glass containers commonly called 'storage jars,' which are imported from Italy, Spain and China, as well as other countries" (Complaint, par. 5). According to the complaint, paragraph 6, the merchandise in dispute comprises "storage jars" classified and assessed with duty upon liquidation under subheading 7013.39.20, HTSUS, as "glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading no. 7010 or 7018)." Italglass claims that the "storage jars" at issue are entitled to entry free of duty as they are more specifically provided for in subheading 7010 as "carboys, bottles, flasks, jars, pots, vials, ampoules and other containers, of glass of a kind used

[1] Significantly, although failing to present the proposed supplemental materials pertaining to its own towels during the administrative proceedings, Win-Tex requested Commerce to consider a scope determination regarding shop towels imported by Able Textile Corporation. *Final Scope Ruling on the Request by Able Textile Corporation for Clarification of the Scope of the Antidumping Duty Order on Shop Towels from the People's Republic of China* (Aug. 21, 1990. Adm. Rec. 5. As requested by Win-Tex, Commerce included the Able scope ruling in the administrative record of the *1992 Scope Ruling*. Adm. Rec. 14 at 3.

for the conveyance or packing of goods; preserving jars of glass; stoppers, lids and other closures, of glass"; alternatively, plaintiff claims that the glassware is dutiable under subheading 7020 as articles of glass not specially provided for.

Plaintiff challenges the denial of its protests against liquidations and hence predicates the court's jurisdiction on 19 U.S.C. § 1581(a).

Claiming that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law, plaintiff seeks summary judgment under CIT Rule 56(a) sustaining its claimed classification with regard to the *glass containers defendant has described and identified as "jars," "bottles," and "canisters" in Pre-entry Classification Ruling No. PC–89–0003, dated August 1989, issued by Customs to plaintiff ("Ruling").*

In support of its motion, plaintiff submitted, *inter alia*, the 1989 Ruling including an attached ten page listing of the Italglass line of merchandise with verbal descriptions, style numbers and pre-entry HTSUS classification subheadings and catalog photographs. However, no affidavit, deposition or other evidentiary material was submitted by plaintiff identifying the disputed invoiced items covered by the entries.

In opposition to the summary judgment motion, defendant points up, correctly, that the complaint covers only "storage jars," not "bottles" or "canisters"; that therefore plaintiff's motion seeks summary judgment on articles other than jars; that such other articles may not even be covered by the entries involved in this case; and that in any event, plaintiff has failed to adduce evidence identifying the disputed items in the entries.

In reply, plaintiff asserts that the jars, bottles, and canisters covered by the Ruling and classified by Customs under subheading 7013 are clearly identified in the entries by description and style numbers and that therefore there can be no genuine dispute as to defendant's actual knowledge of the identity of the specific Italglass items that are in issue.

As indicated by Customs in its Ruling, Customs agreed to accept entry of the Italglass merchandise at the pre-entry classification tariff numbers. Hence, in liquidating entries and in reviewing protests Customs would obviously relate entered merchandise to any corresponding pre-entry classified merchandise. Plaintiff argues that for purposes of its motion for summary judgment, the Ruling and entries are part of the record in this case and therefore reference in plaintiff's motion to items described in the Ruling as "jars," "bottles," and "canisters" is sufficient to identify the disputed items in the subject entries. The court disagrees.

Plaintiff overlooks that these proceedings are not before the court under 19 U.S.C. § 1581(h) to review a preimportation ruling; nor is this action judicially reviewable on an administrative record. Rather, this action is here on *de novo* review under 19 U.S.C. § 1581(a)—on the pleadings and record before the court. *See* 28 U.S.C. § 2640(a)(1). Unless stipulated between the parties, plaintiff has the burden of submitting evidence on its motion identifying the specific items of merchandise

in the particular entries in the case that are claimed to have been incorrectly classified by Customs. The Ruling *per se* does not perform that function.

In *de novo* judicial review under § 1581(a), the pre-entry classification ruling governs neither the scope of the merchandise covered by the complaint nor constitutes evidence of the specific items of disputed merchandise in the subject entries. Consequently, since plaintiff has adduced no affidavit or other evidence to identify the disputed items actually imported under the entries in this case, plaintiff's motion for summary judgment must fail. *See G.M. Rubber Industries, Inc. v. United States*, 81 Cust. Ct. 162, C.R.D. 78–14 (1978).

In sum, the court must agree with defendant that plaintiff has failed to establish that there are no triable issues of fact. *See Balboa Ins. Co. v. United States*, 775 F.2d 1158, 1163 (Fed. Cir. 1985); *D.L. Auld Co. v. Chroma Graphics Corp.*, 714 F.2d 1144, 1146–47 (Fed. Cir. 1983). First, in proceeding *de novo* under 19 U.S.C. § 1581(a), where unlike § 1581(h), classification of only specific items of entered merchandise are in issue, plaintiff incorrectly assumes that it can identify the disputed items simply by reference to those described by Customs in a pre-entry classification review ruling. Second, with respect to the classification of the merchandise, on a motion for summary judgment plaintiff has the burden of establishing the same essential elements of its case that it would be required to prove at trial. *See Allied International v. United States*, Slip Op. 92–100 (July 1, 1992). Yet no evidence whatever was adduced by plaintiff supporting the extensive factual assertions contained in plaintiff's memorandum of law concerning the closures or use of the goods. Fundamentally, such assertions by counsel are not evidence in support of a motion for summary judgment.

For the foregoing reasons, it is hereby ORDERED that plaintiff's motion for summary judgment is denied.

(Slip Op. 92–144)

GROUP ITALGLASS U.S.A., INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 91–08–00594 (BN)

OPINION AND ORDER

Appearances:

Soller, Shayne & Horn (*Paulsen K. Vandervert*, Esq.) for plaintiff.

Stuart M. Gerson, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office (*Mark S. Sochaczewsky*, Esq.), Commercial Litigation Branch, Civil Division, United States Department of Justice; *Steven Berke*, Attorney, United States Customs Service, for defendant.

[Motion for summary judgment denied.]

(Dated August 25, 1992)

NEWMAN, *Senior Judge*: In this civil action brought pursuant to 19 U.S.C. § 1515 contesting the denial of the administrative protests filed in accordance with 19 U.S.C. § 1514(a), the complaint raises the issue of the proper tariff classification and rate of duty under the Harmonized Tariff Schedule of the United States ("HTSUS") on certain importations by Group Italglass USA, Inc. ("Italglass") in 1989 of "glass containers commonly called 'storage jars,' which are imported from Italy, Spain and China, as well as other countries" (Complaint, par. 5). According to the complaint, paragraph 6, the merchandise in dispute comprises "storage jars" classified and assessed with duty upon liquidation under subheading 7013.39.20, HTSUS, as "glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading no. 7010 or 7018)." Italglass claims that the "storage jars" at issue are entitled to entry free of duty as they are more specifically provided for in subheading 7010 as "carboys, bottles, flasks, jars, pots, vials, ampoules and other containers, of glass of a kind used for the conveyance or packing of goods; preserving jars of glass; stoppers, lids and other closures, of glass"; alternatively, plaintiff claims that the glassware is dutiable under subheading 7020 as articles of glass not specially provided for.

Plaintiff challenges the denial of its protests against liquidations and hence predicates the court's jurisdiction on 19 U.S.C. § 1581(a).

Claiming that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law, plaintiff seeks summary judgment under CIT Rule 56(a) sustaining its claimed classification with regard to the *glass containers defendant has described and identified as "jars," "bottles," and "canisters" in Pre-entry Classification Ruling No. PC–89–0003, dated August 1989, issued by Customs to plaintiff ("Ruling").*

In support of its motion, plaintiff submitted, *inter alia* the 1989 Ruling including an attached ten page listing of the Italglass line of merchandise with verbal descriptions, style numbers and pre-entry HTSUS classification subheadings and catalog photographs. However, no affidavit, deposition or other evidentiary material was submitted by plaintiff identifying the disputed invoiced items covered by the entries.

In opposition to the summary judgment motion, defendant points up, correctly, that the complaint covers only "storage jar," not "bottles" or "canisters"; that therefore plaintiff's motion seeks summary judgment on articles other than jars; that such other articles may not even be covered by the entries involved in this case; and that in any event, plaintiff has failed to adduce evidence identifying the disputed items in the entries.

In reply, plaintiff asserts that the jars, bottles, and canisters covered by the Ruling and classified by Customs under subheading 7013 are clearly identified in the entries by description and style numbers and that therefore there can be no genuine dispute as to defendant's actual knowledge of the identity of the specific Italglass items that are in issue.

As indicated by Customs in its Ruling, Customs agreed to accept entry of the Italglass merchandise at the pre-entry classification tariff numbers. Hence, in liquidating entries and in reviewing protests, Customs would obviously relate entered merchandise to any corresponding pre-entry classified merchandise. Plaintiff argues that for purposes of its motion for summary judgment, the Ruling and entries are part of the record in this case and therefore reference in plaintiff's motion to items described in the Ruling as "jars," "bottles," and "canisters" is sufficient to identify the disputed items in the subject entries. The court disagrees.

Plaintiff overlooks that these proceedings are not before the court under 19 U.S.C. § 1581(h) to review a preimportation ruling; nor is this action judicially reviewable on an administrative record. Rather, this action is here on *de novo* review under 19 U.S.C. § 1581(a) – on the pleadings and record before the court. *See* 28 U.S.C. § 2640(a)(1). Unless stipulated between the parties, plaintiff has the burden of submitting evidence on its motion identifying the specific items of merchandise in the particular entries in the case that are claimed to have been incorrectly classified by Customs. The Ruling *per se* does not perform that function.

In *de novo* judicial review under § 1581(a), the pre-entry classification ruling governs neither the scope of the merchandise covered by the complaint nor constitutes evidence of the specific items of disputed merchandise in the subject entries. Consequently, since plaintiff has adduced no affidavit or other evidence to identify the disputed items actually imported under the entries in this case, plaintiff's motion for summary judgment must fail. *See G.M. Rubber Industries, Inc. v. United States*, 81 Cust. Ct. 162, C.R.D. 78–14 (1978).

In sum, the court must agree with defendant that plaintiff has failed to establish that there are no triable issues of fact. *See Balboa Ins. Co. v. United States*, 775 F.2d 1158, 1163 (Fed. Cir. 1985); *D.L. Auld Co. v. Chroma Graphics Corp.*, 714 F.2d 1144, 1146–47 (Fed. Cir. 1983). First, in proceeding *de novo* under 19 U.S.C. § 1581(a), where unlike § 1581(h), classification of only specific items of entered merchandise are in issue, plaintiff incorrectly assumes that it can identify the disputed items simply by reference to those described by Customs in a pre-entry classification review ruling. Second, with respect to the classification of the merchandise, on a motion for summary judgment plaintiff has the burden of establishing the same essential elements of its case that it would be required to prove at trial. *See Allied International v. United States*, Slip Op. 92–100 (July 1, 1992). Yet no evidence whatever was adduced by plaintiff supporting the extensive factual assertions contained in plaintiff's memorandum of law concerning the closures or use of the goods. Fundamentally, such assertions by counsel are not evidence in support of a motion for summary judgment.

For the foregoing reasons, it is hereby ORDERED that plaintiff's motion for summary judgment is denied.

(Slip Op. 92–145)

GROUP ITALGLASS U.S.A., INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 91–09–00677 (BN)

OPINION AND ORDER

Appearances:

Soller, Shayne & Horn (*Paulsen K. Vandervert*, Esq.) for plaintiff.

Stuart M. Gerson, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office (*Mark S. Sochaczewsky*, Esq.), Commercial Litigation Branch, Civil Division, United States Department of Justice; *Steven Berke*, Attorney, United States Customs Service, for defendant.

[Motion for summary judgment denied.]

(Dated August 25, 1992)

NEWMAN, *Senior Judge*: In this civil action brought pursuant to 19 U.S.C. § 1515 contesting the denial of the administrative protests filed in accordance with 19 U.S.C. § 1514 (a), the complaint raises the issue of the proper tariff classification and rate of duty under the Harmonized Tariff Schedule of the United States ("HTSUS") on certain importations by Group Italglass USA, Inc. ("Italglass") in 1990–91 of "glass containers commonly called 'storage jars,' which are imported from Italy, Spain and China, as well as other countries" (Complaint, par. 5). According to the complaint, paragraph 6, the merchandise in dispute comprises "storage jars" classified and assessed with duty upon liquidation under subheading 7013.39.20, HTSUS, as "glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading no. 7010 or 7018)." Italglass claims that the "storage jars" at issue are entitled to entry free of duty as they are more specifically provided for in subheading 7010 as "carboys, bottles, flasks, jars, pots, vials, ampoules and other containers, of glass of a kind used for the conveyance or packing of goods; preserving jars of glass; stoppers, lids and other closures, of glass"; alternatively, plaintiff claims that the glassware is dutiable under subheading 7020 as articles of glass not specially provided for.

Plaintiff challenges the denial of its protests against liquidations and hence predicates the court's jurisdiction on 19 U.S.C. § 1581(a).

Claiming that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law, plaintiff seeks summary judgment under CIT Rule 56(a) sustaining its claimed classification with regard to the *glass containers defendant has described and identified as "jars," "bottles," and "canisters" in Pre-entry Classification Ruling No. PC–89–0003, dated August 1989, issued by Customs to plaintiff ("Ruling").*

In support of its motion, plaintiff submitted, *inter alia* the 1989 Ruling including an attached ten page listing of the Italglass line of merchandise with verbal descriptions, style numbers and pre-entry HTSUS classification subheadings and catalog photographs. However, no affi-

davit, deposition or other evidentiary material was submitted by plaintiff identifying the disputed invoiced items covered by the entries.

In opposition to the summary judgment motion, defendant points up, correctly, that the complaint covers only "storage jars," not "bottles" or "canisters"; that therefore plaintiff's motion seeks summary judgment on articles other than jars; that such other articles may not even be covered by the entries involved in this case; and that in any event, plaintiff has failed to adduce evidence identifying the disputed items in the entries.

In reply, plaintiff asserts that the jars, bottles, and canisters covered by the Ruling and classified by Customs under subheading 7013 are clearly identified in the entries by description and style numbers and that therefore there can be no genuine dispute as to defendant's actual knowledge of the identity of the specific Italglass items that are in issue.

As indicated by Customs in its Ruling, Customs agreed to accept entry of the Italglass merchandise at the pre-entry classification tariff numbers. Hence, in liquidating entries and in reviewing protests, Customs would obviously relate entered merchandise to any corresponding pre-entry classified merchandise. Plaintiff argues that for purposes of its motion for summary judgment, the Ruling and entries are part of the record in this case and therefore reference in plaintiff's motion to items described in the Ruling as "jars," "bottles," and "canisters" is sufficient to identify the disputed items in the subject entries. The court disagrees.

Plaintiff overlooks that these proceedings are not before the court under 19 U.S.C. § 1581(h) to review a preimportation ruling; nor is this action judicially reviewable on an administrative record. Rather, this action is here on *de novo* review under 19 U.S.C. § 1581(a) – on the pleadings and record before the court. *See* 28 U.S.C. § 2640(a)(1). Unless stipulated between the parties, plaintiff has the burden of submitting evidence on its motion identifying the specific items of merchandise in the particular entries in the case that are claimed to have been incorrectly classified by Customs. The Ruling *per se* does not perform that function.

In *de novo* judicial review under § 1581(a), the pre-entry classification ruling governs neither the scope of the merchandise covered by the complaint nor constitutes evidence of the specific items of disputed merchandise in the subject entries. Consequently, since plaintiff has adduced no affidavit or other evidence to identify the disputed items actually imported under the entries in this case, plaintiff's motion for summary judgment must fail. *See G.M. Rubber Industries, Inc. v. United States*, 81 Cust. Ct. 162, C.R.D. 78–14 (1978).

In sum, the court must agree with defendant that plaintiff has failed to establish that there are no triable issues of fact. *See Balboa Ins. Co. v. United States*, 775 F.2d 1158, 1163 (Fed. Cir. 1985); *D.L. Auld Co. v. Chroma Graphics Corp.*, 714 F.2d 1144, 1146–47 (Fed. Cir. 1983). First, in proceeding *de novo* under 19 U.S.C. § 1581(a), where unlike § 1581(h), classification of only specific items of entered merchandise

are in issue, plaintiff incorrectly assumes that it can identify the disputed items simply by reference to those described by Customs in a pre-entry classification review ruling. Second, with respect to the classification of the merchandise, on a motion for summary judgment plaintiff has the burden of establishing the same essential elements of its case that it would be required to prove at trial. *See Allied International v. United States*, Slip Op. 92–100 (July 1, 1992). Yet no evidence whatever was adduced by plaintiff supporting the extensive factual assertions contained in plaintiff's memorandum of law concerning the closures or use of the goods. Fundamentally, such assertions by counsel are not evidence in support of a motion for summary judgment.

For the foregoing reasons, it is hereby ORDERED that plaintiff's motion for summary judgment is denied.

(Slip Op. 92–146)

RICO IMPORT CO., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 91–01–00070

[Upon cross-motions for summary judgment, Plaintiff's motion is denied and Defendant's cross-motion is granted.]

(Dated August 27, 1992)

Glad & Ferguson (*Edward N. Glad*), for Plaintiff.

Stuart M. Gerson, Assistant Attorney General; *Joseph I. Liebman*, Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division, United States Department of Justice (*Carla Garcia-Benitez*); of counsel: *Arlene Klotzko*, Attorney, Office of the Assistant Chief Counsel, United States Customs Service, for Defendant.

OPINION AND ORDER

CARMAN, *Judge*: The subject merchandise, known as *Arundo Donax* tubes, were imported by Plaintiff, Rico Import Co., and liquidated by the United States Customs Service at the rate of duty of 3 percent *ad valorem* under subheading 4602.10.50, Harmonized Tariff Schedule of the United States (1990) ("HTSUS"), as an article made directly to shape from other vegetable plaiting materials. Plaintiff protested the liquidations, claiming that the *Arundo Donax* tubes were properly classifiable free of duty under subheading 1404.90.00, HTSUS, as "[v]egetable products not elsewhere specified or included * * * Other." The protests were denied.

After Plaintiff filed its complaint, Defendant counterclaimed asserting that the *Arundo Donax* tubes are specially provided for in subheading 1401.90.40, HTSUS, which encompasses "[v]egetable materials of a kind primarily used for plaiting * * * Other," dutiable at 3.8 percent. Be-

cause Defendant is no longer pursuing its original classification under subheading 4602.10.50, it is deemed abandoned. The action is before the Court on Plaintiff's motion for summary judgment and Defendant's cross-motion for summary judgment.

"Summary judgment is properly granted only where there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law." *Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1390 (Fed. Cir. 1987). The meaning of a classification term is a question of law, *Digital Equip. Corp. v. United States*, 889 F.2d 267, 268 (Fed. Cir. 1989); hence, because the parties have stipulated to all material facts in this case, summary judgment is appropriate.

For the reasons that follow, the Court finds that the subject merchandise as imported is properly classifiable as set forth in the government's counterclaim. Accordingly, Defendant is entitled to summary judgment as a matter of law.

The pertinent provisions of the HTSUS are as follows:

As Counterclaimed by Defendant:

Heading/ subheading	*Article description*	*Rate of duty*
1401	Vegetable materials of a kind used primarily for plaiting (for example, bamboos, rattans, reeds, rushes, osier, raffia, cleaned, bleached or dyed cereal straw and lime bark):	
* * * * * * *		
1401.90.40	Other: [except bamboos or rattans]	
* * * * * * *		
	Other [except willow]	[2]5%
9903.10.19	Other vegetable materials of a kind used primarily for plaiting (provided for in subheading 1401.90.40)	3.8%

HTSUS CHAPTER 14 NOTES

Notes:

2. Heading 1401 applies, *inter alia*, to bamboos (whether or not split, sawn lengthwise, cut to length, rounded at the ends, bleached, rendered nonflammable, polished or dyed), split osier, reeds and the like, to rattan cores and to drawn or split rattans. The heading does not apply to chipwood.

[2] See heading 9903.10.19

As Claimed by Plaintiff:

Heading/ subheading	*Article description*	*Rate of duty*
1404	Vegetable products not elsewhere specified or included:	
* * * * * * *		
1404.90.00	Other [except used primarily in dyeing or tanning, or cotton linters]	Free

STIPULATED FACTS

1. *Arundo Donax* (or giant reed) is a tall perennial grass of the family Poaceae which usually measures from 6 to 23 feet tall, and which grows in dense clumps.

2. The poles of the *Arundo Donax* plant may be used for basket weaving; for manufacturing furniture cane sheeting (mats used for patio covers; for privacy with chain link fences; for protection at construction sites from falling debris, et cetera); for use in construction projects, such as porches, roofs, et cetera; and for manufacturing musical reeds.

3. The merchandise covered by this civil action, described in the invoices as clarinet and saxophone cane of *Arundo Donax* tube, consists of denoded tubular sections of *Arundo Donax* (hereinafter referred to as 'the *Arundo Donax* tubes').

4. The *Arundo Donax* tubes imported by Rico Import Co. are obtained from the *Arundo Donax* plant.

5. The poles of the *Arundo Donax* plant are processed as follows to transform them into the imported *Arundo Donax* tubes:

> *Arundo Donax* poles of 18 to 24 foot length are harvested in the winter months while in a dormant state. They are left to cure in the harvested state, kept away from direct sunlight, but with good air circulation, for from 4 to 6 months. The leaves and husks are then removed and the poles are cut to useable lengths of 6 to 8 feet (the upper smaller portion of the pole is discarded and burned). The poles are then sunned for approximately 10 days to 2 weeks and stored to continue drying for a few more months. After the drying period the nodes are removed and the resulting internodes are gauged.
>
> The pieces are then sorted into 2 diameter sizes, one being up to 24 millimeters in diameter and the other from 24 to 27 millimeters. There is also a specification as to the thickness of the wall of the reed pieces. They are then packed in sacks and exported to the United States, and after importation, they are used for musical instruments.

6. The *Arundo Donax* tubes are a vegetable product.

7. The *Arundo Donax* tubes are not a raw vegetable material of the kind used primarily in dyeing or tanning and are not cotton linter.

8. The said merchandise in its condition as imported is actually used only to make reeds for musical instruments.

9. The *Arundo Donax* tubes in their condition as imported cannot be plaited.

10. In their condition as imported, the *Arundo Donax* tubes may be separated into thin strips.

Stipulation of Agreed Statement of Facts ("Stip. Facts").

DISCUSSION

It is well settled that tariff acts must be construed to carry out the intent of the legislature. *Nippon Kogaku (USA), Inc. v. United States*, 69 CCPA 89, 92, 673 F.2d 380, 382 (1982) (citing *Sandoz Chem. Works, Inc. v. United States*, 43 CCPA 152, 156, C.A.D. 623 (1956)). The first place to look to establish the intent of Congress is the language of the statute itself. *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). The Court may resolve ambiguities in the plain language of a statute by resorting to legislative history and other extrinsic sources. *Sandoz Chem. Works*, 43 CCPA at 156.

The only issue before the Court is whether the merchandise in its condition as imported does or does not fall within the class of materials covered under subheading 1401.90.40, HTSUS. To reach that determination, the Court must resolve the question of whether the pre-importation transformation of the *Arundo Donax* poles into *Arundo Donax* tubes makes the latter something other that encompassed by subheading 1401.90.40. There appears to be no disagreement between the parties that unprocessed, raw *Arundo Donax* is encompassed by subheading 1401.90.40.[1]

Defendant argues that the plain language of subheading 1401.90.40 encompasses the *Arundo Donax* tubes. Defendant reasons that because subheading 1401 and Chapter Note 2 to Chapter 14, HTSUS, specifically list "reeds" as an example of a vegetable material of a kind primarily used for plaiting, and the *Arundo Donax* tubes are derived from the *Arundo Donax* plant, itself a reed,[2] the tubes must necessarily be classified under subheading 1401.90.40.

While the argument has a certain simplistic appeal, it evades the underlying issue here. The plain language of the subheading states that only vegetable materials, reeds or otherwise, that are of a "kind primarily used for plaiting" are covered.[3] In this case, the parties have stipulated that because of the described pre-importation processing of the *Arundo Donax* poles, the poles in their condition as imported *cannot* be plaited. Stip. Facts paragraphs 5, 9. Hence, the plain language of the subheading does not conclusively support Defendant's claimed classification.

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[1] For example, in its reply brief, Plaintiff states that "the *Arundo Donax* tubes in their condition as imported *are no longer* raw vegetable material of a kind used primarily for plaiting." Pl. Reply at 3 (emphasis added).

[2] *See* Stip. Facts paragraph 1 (referring to *Arundo Donax* as "giant reed"); *see also Websters Third International Dictionary* 1906 (unabridged ed. 1986) (the term "reed grass" encompasses *Arundo*).

[3] Moreover, subheading 1401.90.40 is not an *eo nomine* designation for reeds; hence, that subheading does not provide for all forms of reeds.

Relying upon the Explanatory Notes to the Harmonized System ("Explanatory Notes") drafted by the Customs Cooperation Council,[4] Defendant sets forth an alternative argument that subheading 1401.90.40 is not limited to vegetable materials that are suitable for plaiting as imported.

The Explanatory Notes to heading 1401 make clear that raw vegetable plaiting materials are not the only types of vegetable materials encompassed by item 1401.90.40:

> [H]eading [1401] covers raw vegetable materials of a kind used primarily for the manufacture, by joining or plaiting, of articles such as mats and matting, trays, basket-ware of all kinds (including baskets for packing fruit, vegetables, oysters, etc.), hampers, valises, furniture (e.g., chairs and tables), hats, etc. *These raw materials may also be used for the manufacture of brushes, umbrella handles, walking sticks, fishing rods, pipe stems, coarse ropes, etc.*, for the manufacture of paper pulp, or as litter.

Explanatory Notes, Chapter 14 (emphasis added). Furthermore, the Explanatory Notes specifically name *Arundo Donax* as being included under heading 1401:

> The heading covers, *inter alia*, the following raw materials:
>
> * * * * * * *
>
> (3) **Reeds and rushes**, collective terms applied to many herbaceous plants which grow in damp places, both in temperate zones and in the tropics. * * * The best known varieties include water rushes (*Scirpus lacustris*), common or wild reeds (*Arundo donax* and *Phragmites communis*) * * *.

The Court concludes that while Plaintiff is correct that classification of imported merchandise is determined by its condition as imported,[5] a particular import's actual susceptibility to plaiting does not appear to be controlling under subheading 1401.90.40, HTSUS.

Defendant further urges that case law and the Explanatory Notes support the conclusion that vegetable materials such *Arundo Donax* are not removed from coverage under subheading 1401.90.40 by virtue of the pre-importation processing in this case.

The above-described processing of the *Arundo Donax* poles prior to shipment was examined by the Customs Court in *Rico Prod. Co. v. United States*; 44 Cust. Ct. 100, C.D. 2159 (1960) and *J.E. Bernard Co. v. United States*, 41 Cust. Ct. 1, C.D. 2011 (1958). In *J.E. Bernard*, sticks

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[4] The Customs Cooperation Council ("CCC") is an international body that was responsible for developing the Harmonized Commodity Description and Coding System, the structure of which the United States used to replace the Tariff Schedules of the United States. The new Harmonized Tariff Schedule was implemented in the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 (1988). The HTSUS became effective on January 1, 1989.

The Joint Committee on the Omnibus Trade and Competitiveness Act recognized the CCC's Explanatory Notes to the Harmonized System as the CCC's official interpretation of the Harmonized System. *See* 23 Cust. Bull. 379, 380-81, T.D. 89-80 (1989). The Joint Committee stated that the Explanatory Notes, while drafted subsequent to the Harmonized System and not considered binding, on the contracting parties, are nevertheless "useful in ascertaining the classification of merchandise under the system." *Id.* at 381.

[5] *See United States v. Citroen*, 223 U.5..407, 414-15 (1912); *Amersham Corp. v. United States*, 5 CIT 49, 53, 564 F. Supp. 813, 815 (1983), *aff'd*, 2 Fed. Cir. (T) 33, 728 F.2d 1453 (1984).

from *Arundo Donax* that were obtained by a nearly identical process as the *Arundo Donax* tubes in the instant case were found to be "in the rough." 41 Cust. Ct. at 4. In that case, the government argued, unsuccessfully, that the processing to which the *Arundo Donax* was subjected was far enough advanced to remove the merchandise from the category of sticks and other woods "in the rough" found at paragraph 1806 of the Tariff Act of 1930.

The Explanatory Notes to Chapter 14 of the HTSUS make clear that heading 1401 was intended to cover vegetable materials that have been subjected to a degree of processing:

> [V]egetable plaiting materials fall in this heading whether or not washed and whether raw, or split in strips, peeled, polished, bleached, prepared for dyeing, dyed, varnished or lacquered, or rendered noninflammable. The goods of the heading may also be cut to length, whether or not rounded at the ends (straw for making drinking straws, canes for making fishing-rods, bamboos for dyeing, etc.), or assorted in bundles or hanks which may be lightly twisted for convenience of packing, storage, transport, etc.

Explanatory Notes, Chapter 14. Similarly, the Chapter Notes to heading 1401, HTSUS, indicate that the heading applies to vegetable products "whether or not split, sawn lengthwise, cut to length, rounded at the ends, bleached, rendered nonflammable, polished or dyed."

It is well established in customs jurisprudence that the processing necessary to transform an article from its raw state into its condition as imported does not amount to an alteration in value or condition unless the merchandise's *per se* character is affected. *See Hampton, Jr. & Co v. United States*, 6 Ct. Cust. Appls. 392, 395, T.D. 35926 (1915). The Court has carefully reviewed the described pre-importation processing to which the *Arundo Donax* poles are subjected and finds that none of that processing prevents the classification of the imports under subheading 1401.90.40; the pre-importation processing did not change the essential raw vegetable character of the *Arundo Donax*.

Based upon the Explanatory Notes and the Customs Court's conclusions in *J.E. Bernard* regarding the nearly identical *Arundo Donax* processing as in the instant case, this Court concludes that Congress intended the subject imports be encompassed by subheading 1401.90.40, HTSUS.

Plaintiff also suggests that since the only actual use of the subject imports in their condition as imported is to make reeds for musical instruments, the imports are not properly classifiable under subheading 1401.90.40. The court notes, however, that the actual use to which the individual imported merchandise is put is not controlling; classification is determined on the basis of the chief use of articles of that class generally. *United States v. Colibri Lighters*, 47 CCPA 106, 109, C.A.D. 739 (1960). As discussed, Plaintiff has not convinced this Court that the *Arundo Donax* tubes in their imported condition are sufficiently ad-

vanced or altered so as to remove them from the class of vegetable products encompassed by subheading 1401.90.40, HTSUS.

CONCLUSION

For the reasons above, this Court finds that the subject imports herein described as *Arundo Donax* tubes, are properly classifiable under Defendant's counterclaimed classification, subheading 1401.90.40, HTSUS. Accordingly, it is hereby ORDERED that Plaintiff's motion for summary judgment is denied and Plaintiff's complaint is dismissed. It is further ORDERED that Defendant's cross-motion for summary judgment is granted. It is further ORDERED that the subject imports be reliquidated at the statutory rate applicable under subheading 1401.90.40, HTSUS, and that Plaintiff shall pay the United States the difference between the amount originally assessed upon the liquidation of the imported merchandise and the amount found to be owing upon reliquidation.

Judgment will enter accordingly.

ABSTRACTED CLASSIFICATI

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED
C92/151 8/19/92 Aquilino, J.	E. Gluck Corp.	90–11–00615	716.09–716.45, 715.05, etc. Various rates
C92/152 8/19/92 Aquilino, J.	E. Gluck Corp.	90–12–00632	716.09–716.45, 715.05, etc. Various rates

TION DECISIONS

	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
	688.40, 688.45, 688.43, 688.42, etc. Various rates	Belfont Sales Corp. *v.* U.S. 878 F.2d 1413 (Fed. Cir. 1989) or Texas Instruments, Inc. *v.* U.S., 673 F.2d 1375 (Fed. Cir. 1982)	New York Quartz analog watches, etc.
	688.40, 688.45, 688.43, 688.42, etc. Various rates	Belfont Sales Corp. *v.* U.S. 878 F.2d 1413 (Fed. Cir. 1989) or Texas Instruments, Inc. *v.* U.S., 673 F.2d 1375 (Fed. Cir. 1982)	New York Quartz analog watches, etc.

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